

1641

No. ....

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IN THE

United States

Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

In The Matter of BEVERLYRIDGE  
COMPANY, et al., Bankrupt.

GEORGE H. OSWALD, RICHARD  
CASTLE,

*Appellants,*

*vs.*

JOHN BEYER, Trustee,

*Appellee.*

# Transcript of Record

Appeal From the United States District Court for the  
Southern District of California,  
Central Division.

FILED  
AUG 11 1932

F. W. ...  
CLERK



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## I N D E X

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NAMES AND ADDRESSES OF ATTORNEYS

*For Appellants:*

GEORGE DELANY BLAIR,  
J. GILBERT FALL,  
Citizens National Bank Building,  
Los Angeles, California.

*For Appellee:*

LORRIN ANDREWS,  
756 South Broadway,  
Los Angeles, California.

**CITATION.**

UNITED STATES OF AMERICA—SS.

To JOHN BEYER, Trustee of the BEVERLYRIDGE COMPANY, a co-partnership, Bankrupt,

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 14th day of June, A. D. 1929, pursuant to the appeal duly obtained and filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause wherein you as trustee of the Beverlyridge Company, a co-partnership, Bankrupt, are appellee and Richard Castle, Claimant, is appellant, and you are required to show cause, if any there be, why the order and decree in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD J. HENNING,  
United States District Judge for the Southern  
District of California, this 17th day of May,  
A. D. 1929, and of the Independence of the United  
States, the one hundred and fifty-third year.

EDWARD J. HENNING,  
*U. S. District Judge for the  
Southern District of California.*

(Endorsed): Filed May 29 1929 at ..... min. past 10  
o'clock a. m. R. S. Zimmerman, Clerk. By B. B. Hansen,  
Deputy.

**CITATION**

UNITED STATES OF AMERICA—SS.

To JOHN BEYER, Trustee of the BEVERLY-RIDGE COMPANY, a co-partnership, Bankrupt.

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 14th day of June, A. D. 1929, pursuant to the appeal duly obtained and filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause wherein you are trustee of the Beverlyridge Company, a co-partnership, Bankrupt, are appellee, and Geo. H. Oswald, claimant, is appellant, and you are required to show cause, if any there be, why the order and decree in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD J. HENNING,  
United States District Judge for the Southern  
District of California, this 17th day of May,  
A. D. 1929, and of the Independence of the United  
States, the one hundred and fifty-third year.

EDWARD J. HENNING,  
*U. S. District Judge for the  
Southern District of California.*

(Endorsed): Filed May 29 1929 at ..... min. past 10  
o'clock a. m. R. S. Zimmerman, Clerk. By B. B. Hansen,  
Deputy.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA, SOUTHERN DIVISION.

IN THE MATTER OF BEVERLYRIDGE COMPANY,  
ET AL., Bankrupt.

No. ....

PROOF OF UNSECURED DEBT.

At Los Angeles, California, in said Southern District of California, Southern Division, on the 16th day of November, A. D. 1926, came Richard Castle of Los Angeles County, State of California, in said District of California, Southern Division, and made oath and says that the person in the above matter against whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition and still is, justly and truly indebted to said deponent in the sum of twenty-five thousand eight hundred and eighty (\$25,880) dollars; and that the consideration of said debt is as follows:

That on or about the 5th day of November, 1925, the said bankrupts entered into a contract with the said Richard Castle, a copy of which is attached hereto and made a part hereof and marked Exhibit "A."

That pursuant to said contract, the said Richard Castle agreed to obtain from one Geo. H. Oswald or Oswald Brothers, a certain contract wherein the said Oswald would agree to make certain improvements on certain real property known as Beverlyridge, consisting of about one hundred (100) acres.

That thereafter and on or about the 19th day of No-

vember, 1925, the said Richard Castle induced the said Geo. H. Oswald to enter into a contract with the said bankrupts wherein and whereby the said Oswald agreed to make certain improvements on said real property, that in consideration for obtaining said contract, the said bankrupts agreed to pay said Richard Castle twenty-five thousand (\$25,000) dollars, which sum was to be paid in lots which were to be deeded to said Richard Castle from said property known as Beverlyridge, and on or about the 14th day of December, 1925, in order to carry out the said agreement marked Exhibit "A," the said bankrupts entered into an agreement to convey to the said Richard Castle certain property in the said Beverlyridge, that a copy of said agreement is attached hereto and made a part hereof as if fully set forth and marked Exhibit "B."

That the said deponent is informed and believes and upon that ground states that the said bankrupts placed a trust deed upon said Beverlyridge as security for a note which said trust deed and note were held by the Hogan Finance Company, a corporation, that said trust deed was a prior encumbrance to the contracts herein marked Exhibit "A" and "B" and that the said deponent is informed and believes and upon that ground states that the said bankrupts have defaulted in the payment of said note and that the said Hogan Finance Company have foreclosed under said trust deed, and any and all rights held by the said bankrupts in and to said property known as Beverlyridge has been lost by reason of said Hogan Finance Company foreclosing said trust deed, and that the said deponent has lost any and all right or interest he may have had in and to said property mentioned in

Exhibits "A" and "B" herein, by reason of said foreclosure.

That the said bankrupts agreed to protect the said interest of said deponent on said property and agreed to pay said note and trust deed held by said Hogan Finance Company and that by reason of said failure to pay said note and trust deed thereby causing said deponent to lose his rights and interest in said property and that by reason of said loss, the said deponent was damaged in the sum of twenty-five thousand (\$25,000) dollars.

That during the month of November, 1925, and prior to the said bankruptcy proceedings herein, the said deponent advanced to the said bankrupts the sum of eight hundred and eighty (\$880) dollars, said sum being used by the said bankrupts for the purpose of paying office help and expenses.

That no part of said debt has been paid, and no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, that there are no setoffs or counter-claims to the same and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatsoever.

RICHARD CASTLE  
*Creditor.*

Subscribed and sworn to before me this 16th day of November, 1926.

(Seal)

PEARL B. SOMERS,  
*Notary Public in and for the County of  
Los Angeles, State of California.*

My commission expires May 4, 1927.

To George D. Blair,  
711 Security Bldg.,  
Los Angeles, Calif.

I, Richard Castle the claimant mentioned in the foregoing claim, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, *whenever* advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting of meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

RICHARD CASTLE.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal the 16th day of November, A. D. 1926.

Signed, Sealed and Delivered in the Presence of  
RICHARD CASTLE (seal).

Acknowledged before me, this 16 day of November,  
1926.

(Seal) PEARL B. SOMERS,  
*Notary Public in and for said County and State.*

My commission expires May 4, 1927.

November 5, 1925.

Mr. Richard Castle  
9150 West Pico  
Los Angeles

Dear Sir:

In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers—We herewith beg to state that when this deal is completed, we shall deed to you \$25,000. worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500 and \$1600.

Yours very truly,

Beverlyridge Company,

(Signed) Charles Stone,

Managing Director

(Exhibit "A")

#### AGREEMENT TO CONVEY REAL ESTATE.

THIS AGREEMENT, made this 14th day of December, 1925, by and between CHARLES STONE, as trustee under a Deed and Declaration of Trust dated April 18, 1925, and recorded in the office of the Recorder of Los Angeles County, California, on the 21st day of May,



1925, in Book 4002 of Miscellaneous Records at page 108, party of the first part, and Richard Castle of Los Angeles, California, party of the second part.

Party of the first part, in consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property in the City of Los Angeles, County of Los Angeles, State of California, to-wit:

That certain piece or parcel of land situated in Los Angeles County, State of California, being in the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 11, T. 1 S., R. 15 W., S. B. B. & M. and particularly described as follows:

Beginning at the Northwesterly corner of Lot 73 of Tract No. 8080 as shown on that certain map recorded in Book 112, at pages 9 et seq. of Maps, Records of Los Angeles County, California, and running thence Northwesterly along the arc of a circle curving to the left, having a radius of 486 feet, a distance of 20.20 feet, to a point, thence N.  $13^{\circ} 58' W.$ , a distance of 96.81 feet to a point, thence along the arc of a circle curving to the right having a radius of 123.835 feet, a distance of 83.94 feet to a point, thence  $5.87^{\circ} 57' 18'' E.$ , a distance of 97.244 feet to a point, thence  $5.8^{\circ} 53' 03'' E.$ , a distance of 64.772 feet to a point, thence along the arc of a circle curving to the right and having a radius of 15 feet, a distance of 13.49 feet to a point, thence along the arc of a circle curving to the left and having a radius of 30 feet, a distance of 64.366 feet to a point, thence  $5.0^{\circ} 06' 48'' W.$ , a distance of 108.923 feet to a point, thence along the arc of a circle curving

to the right and having a radius of 15 feet, a distance of 28.914 feet to a point of the northerly line of said Lot 73 of said Tract 8080, thence N.  $69^{\circ} 26' 40''$  W. along said northerly line of said Lot 73, a distance of 58.505 feet to a point, thence N.  $34^{\circ} 28' 40''$  W. along the boundary line of said Lot 73, a distance of 44.41 feet to the point of beginning.

(Exhibit "B")

Also

That certain piece or parcel of land situated in Los Angeles County, State of California, being in the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 11, T. 1 S., R. 15 W., S. B. B. & M. and particularly described as follows:

Beginning at the Northeasterly corner of Lot No. 74 of Tract No. 8080, as shown on that certain map recorded in Book 112, at pages 9 et seq. of Maps, Records of Los Angeles County, California, and running thence N.  $67^{\circ} 36'$  W. along the northerly line of said Lot 74, a distance of 67.21 feet to a point, thence along the arc of a circle curving to the right and having a radius of 30 feet, a distance of 35.455 feet to a point, thence N.  $0^{\circ} 06' 48''$  E., a distance of 114.309 feet to a point, thence along the arc of a circle curving to the left and having a radius of 30 feet, a distance of 13.102 feet, thence  $534^{\circ} 30' 16''$  E., a distance of 114.945 feet to a point, on the westerly line of Altridge Drive as shown on said map of said Tract 8080, thence southeasterly along said westerly line of Altridge Drive to the point of beginning.

It is expressly understood and agreed however, by

both parties hereto that the deed to be executed by party of the first part pursuant hereto shall contain restrictions as nearly identical as may be with restrictions (1), (2), (3) and (5) and also restrictions similar to restriction No. (4) as contained in all grant deeds heretofore executed by party of the first part conveying any lot or lots in Tract 8080 in the City of Los Angeles, as shown on Map thereof recorded in Book ..... of Maps, Page ....., in the office of the Recorder of Los Angeles County aforesaid.

It is further understood and agreed that as soon as party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the Tract which contains the above described premises, party of the second part shall quitclaim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the trustee under two certain Deeds of Trust, each of which is now a blanket lien on the within described premises and other property.

IN WITNESS WHEREOF, the parties have hereunto set

their hands the day and year first above written.

(Signed) Charles Stone Trustee,  
Grantor.

Richard Castle,  
Grantee.

State of California,  
County of Los Angeles—ss.

Be it remembered that on this 14th day of December, 1925, before me, Gertrude M. Hartman, a notary public in and for said County and State, personally appeared Charles Stone and Richard Castle, each personally known to me and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand official seal the day and year first above written.

(Signed) Gertrude M. Hartman,

Notary Public in and for the County of Los  
(Notarial Seal) Angeles, State of California.

My Commission expires June 16, 1929.

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[TITLE OF COURT AND CAUSE.]

No. 8547-H

OBJECTIONS TO THE CLAIM OF  
RICHARD CASTLE.

John D. Beyer is the duly appointed, qualified and acting Trustee of the above named bankrupt, and as such, objects to the allowance of the claim of RICHARD

CASTLE for Twenty-five Thousand, Eight Hundred Eighty and no/100 (\$25,880.00) heretofore filed but not yet allowed herein, upon the following grounds, to wit:

That the books of the Beverlyridge Company do not show that this amount is due.

JOHN D. BEYER,  
*Trustee*

County of Los Angeles—ss.

STATE OF CALIFORNIA

John D. Beyer, being first duly sworn on oath deposes and says:

That the statements contained in the foregoing Objections to Claims are true, according to the best of his knowledge, information and belief.

JOHN D. BEYER  
*Trustee*

Subscribed and sworn to before me, this 6 day of April, 1927.

(SEAL)

LOUISE HUDSON

Notary Public in and for the State of California, County of Los Angeles.

(Endorsed): Filed Apr 5 1927 at.....Min. past 4 o'clock P. M. Earl E. Moss, Referee, Louise Hudson, Clerk

(Endorsed): Filed Jan 9 1929 at.....min. past 4 o'clock P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy

[TITLE OF COURT AND CAUSE.]

No. ....

## PROOF OF UNSECURED DEBT.

At Los Angeles, California, in said Southern District of California, Southern Division, on the 8th day of November A. D. 1926, came Geo. H. Oswald of Los Angeles County of California, in said district of California, Southern Division, and made oath and says that the persons in the above matter against whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of one hundred fifty-two thousand and nine hundred seventy-nine (\$152,979) dollars; and that the consideration of said debt is as follows:

That on or about the 19th day of November A. D. 1925, the said bankrupts entered into a contract with the said Geo. H. Oswald, a copy of which is attached hereto and made a part hereof and marked Exhibit "A."

That pursuant to said contract, the said Geo. H. Oswald agreed to improve the property described in said Exhibit "A" in the manner therein set forth and at the price therein agreed upon.

That as a condition precedent to the commencing of said work the said bankrupts were required to furnish as provided in paragraph 2. of said contract marked Exhibit "A," plans and profiles of all of the work mentioned in said contract and to take out permits to do the said work. That although on numerous occasions after the said 19th day of November, 1926, and prior to the filing of the petition in bankruptcy in the above

matter, said Geo. H. Oswald requested that the said bankrupts furnish the said plans and profiles and permits to do said work, the said bankrupts failed to furnish the same, that as a result of the said bankrupts failure to furnish said plans and profiles and necessary permits permitting said work to be done, that the said Geo. H. Oswald was prevented from doing any of the work mentioned in said contract and by reason of the failure of said bankrupts to complete said contract, as provided therein, the said Geo. H. Oswald was damaged by reason of failure to make the following profits at the prices set forth in said contract.

The damage sustained by said Geo. H. Oswald, in the order in which said prices for doing said work are set forth in paragraph 4. of said contract are as follows:

(a) Profit on 5" cement concrete paving, set forth in paragraph "4a" of said contract, sixty-six thousand (\$66,000) dollars.

(b) Profit on item "4b", set forth in said contract, seven thousand one hundred seventy-six (\$7,176) dollars.

(c) Profit on item "4c", set forth in said contract, sixty thousand (\$60,000) dollars.

(d) Profit on item "4i", set forth in said contract, nineteen thousand five hundred (\$19,500) dollars.

And in addition to the above items the said Geo. H. Oswald, prior to the said bankruptcy proceedings herein, advanced to the said bankrupts the sum of three hundred two and 43/100 (\$302.43) dollars on the 8th day of December, 1925, said sum being used by said bankrupts to pay their telephone bill.

The total sums due Geo. H. Oswald from said bank-

rupts are one hundred fifty-two thousand nine hundred seventy-eight and 43/100 (\$152,978.43) dollars.

That the security mentioned in said contract, this claimant is informed and believes has been exhausted by reason of the fact that the Hogan Finance Company who held a note secured by a Trust Deed covering said property foreclosed under said Trust Deed and sold said security thereby defeating any security held by the said Geo. H. Oswald.

That the said Geo. H. Oswald would have completed said contract had the said bankrupts performed the things necessary to permit said Geo. H. Oswald to do said work.

That no part of said indebtedness has been paid and no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, that there are no setoffs or counter-claims to the same, and deponent has not nor has any person by his order, or to his knowledge or belief, for his use, had nor received any manner of security for said debt whatever, other than mentioned in said contract marked Exhibit "A" which has been defeated as hereinabove set forth.

GEO. H. OSWALD,

*Creditor.*

Subscribed and sworn to before me this 8th day of November, 1926.

(Seal)

Marguerite L. Wilbur,

Notary Public in and for the County of Los Angeles, State of California.



To Geo. D. Blair—711 Security Bldg.

Los Angeles, Calif.

I, Geo. H. Oswald the claimant mentioned in the foregoing claim, do hereby authorize you, or any of you, to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal the 23 day of November A. D. 1926.

Signed, Sealed and Delivered in the Presence of

GEO. H. OSWALD (Seal)

ACKNOWLEDGED before me, this 23rd day of November, 1926.

(Seal)

HOLMES ELLIS,

*Notary Public in and for said County and State.*

THIS AGREEMENT made and entered into this 19 day of November, A. D., 1925, by and between Charles Stone, Trustee, Charles Stone and Clara F. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. R. Norcross, an unmarried man, parties of the first part, and George H. Oswald, party of the second part: WITNESS-ETH:

1. That for and in consideration of the covenants hereinafter mentioned, the parties of the first part hereby agree to improve the streets and property described as follows, to-wit:

Property now Subdivided

Tract No. 8080, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 112, pages 9 et seq. of Maps, in the office of the County Recorder of said County.

Property not Subdivided.

The North West quarter of the North East quarter of Section 11, Township 1 South, Range 15 West, S. B. M., in the City of Los Angeles, County of Los Angeles, State of California.

ALSO those portions of the South West quarter of the North East quarter and of the North West quarter of the South East quarter of said Section 11, which lie North of the North line of Tract No. 8080, as per map

recorded in Book 112 pages 9 set seq. of Maps, in the office of the County Recorder of said County;

And being approximately 111 acres.

All of said property being situated in the City of Los Angeles, County of Los Angeles, State of California; said improvements to be as follows:

(a) Streets to be graded and paved with 5 inch cement concrete paving.

(b) Light cement concrete curbing, known as Class B.

(c) 8 inch main sewers and 6 inch house connections.

(d) Man holes.

(e) Flush tanks.

(f) Gas and water system, to be piped to each lot.

(g) Electric conduit system, Units 2, 3, and 4, but not Unit 1, except house connections to one foot inside property line.

(h) Excavation, both dirt and rock.

(i) Trimming banks.

2. All of the above work to be under the inspection of the City of Los Angeles, according to the plans and profiles to be furnished by the parties of the first part, and approved by the City of Los Angeles, Permits for the above work to be taken out by the parties of the first part, and the costs of said permits to be paid by the parties of the first part.

3. Party of the second part hereby agrees to begin work on the above improvements within ten days from date and to complete the same within one year from date, unless said party of the second part be obstructed or delayed in the commencement, prosecution or completion

of the work by the act, neglect, delay or default of the parties of the first part, or by strikes, delay of common carriers, the abandonment of the work by employees or the default of the parties of the first part, or by any damage which may happen by fire, lightning, earthquake, or cyclone, or by inclement weather, or by other causes beyond the control of the party of the second part, including inability to procure delivery of materials providing the same shall have been purchased a reasonable time before same are required for use in the said work.

4. In consideration of the above, parties of the first part hereby agree to pay to the party of the second part for said improvements at the following unit prices.

(a) Five (5) inch cement concrete paving, 25 cents per square foot.

(b) Light cement concrete curbing known as Class B per lineal foot 65 cents.

(c) Eight (8) inch main sewers and Six (6) inch house connections, where trench can be dug with trenching machine, and trench not over 8 feet in depth, \$2.50 per lineal foot; where trench over 8 feet, when trench can be dug with trenching machine, \$2.50 per lineal foot, plus 25 cents per lineal foot for each foot in depth, or part thereof over 8 feet. If digging is in substance in which trenching machine can not be used, \$2.50 per lineal foot, plus the cost of digging trench in such substance plus 25 per cent. of the cost of digging said trench in such substance.

(d) Man holes, not over 8 feet in depth, when dug in soft earth in which trenching machine might be used, each \$65.00. If hard earth or substance in which trenching machine can not be used, each \$65.00, plus cost of

excavation in such earth or substance, plus 25 per cent of the cost of such excavation.

(e) Flush tanks, not over 8 feet in depth, when dug in soft earth in which trenching machine might be used, each \$100.00. If hard earth or substance in which trenching machine can not be used, each \$100.00, plus the cost of excavation of such earth or substance, plus 25 per cent. of the cost of such excavation.

(f) Gas, estimate to be furnished by Los Angeles Gas & Electric Co. plus 25 per cent.

(g) Water, same cost as estimate to be furnished by Los Angeles Water Department, plus 25 per cent.

(h) Electric Conduit system, complete, to be hereafter agreed to by parties by letter.

(i) Dirt excavation, 65 cents per cubic yard, where haul is less than 300 feet. For overhaul 5 cents for each hundred feet or any part thereof.

(j) Rock excavation, \$2.00 per cubic yard, not more than 300 foot haul. For overhaul, 10 cents per hundred feet or any part thereof.

(k) Trimming banks, to be hereafter agreed upon by parties by letter.

(l) For finishing grading, excavation, or embankments, preparatory to pouring concrete, where said party of the first part has heretofore graded, excavated, or embanked, cost plus 25 per cent. plus the amounts set forth in Subdivision (i) of this paragraph.

(m) Watering fills, cost plus 25 per cent.

(n) All water used shall be furnished and paid for by the parties of the first part.

It is agreed that overhaul shall be computed by taking the product of the number of cubic yards of material

remaining in any cut after proper deduction has been made for material placed within the free haul distance, by the distance such material is hauled, less 300 feet. The distance such material is hauled will be taken as the distance between the center of volume of such remaining cut and the center of volume of the corresponding fill.

It is further agreed in addition to the above payments, that said party of the second part shall receive all refunds for gas and water and lighting system.

5. Said first parties represent that they are the owners of said property and that the only encumbrances and claims against said property are as follows:

(a) Trust deed in the sum of \$220,000.00 interest at 8% per annum, payable quarterly, due January 19, 1926.

(b) Trust deed in the sum of \$320,000.00 with interest at 8% per annum, payable quarterly, due September, 1927.

(c) Mechanic's liens and attachments not over \$30,000.00, which said first parties agree to remove within 90 days from date.

(d) Approximately seventy-three (73) lots or about seventeen (17) acres of said property have been sold for the sum of approximately \$612,690.00, and that there is due said first parties by reason of said sales approximately \$407,725.00, part of which is evidenced by trust deeds of which \$201,333.00 has been assigned or pledged as security for the payment of \$92,750.00.

Said parties of the first part further represent that they own all of said described land, except as noted in Subdivision (d) of this article, and that each of the Trust Deeds described in Subdivision (a) and (b) contain a release price which together permit them to obtain clear

title to any portion or part of said property, by the payment of a sum equal to \$6190.00 per acre.

6. Said parties of the first part agree to use all sums derived from the payment of said contracts mentioned in Subdivision (d) of Paragraph 5 for the purpose of paying the interest and the trust deeds mentioned in Subdivisions (a) and (b) of Paragraph 5.

7. It is understood and agreed by and between the parties hereto that unless the parties of the first part within ten days from the date hereof obtain an agreement in writing whereby the trust deed mentioned in Subdivision (a) of Paragraph 5 is extended for a period of six months at the same rate of interest the said party of the second part may at his option declare this contract null and void; however, he shall be entitled to collect for any and all work done.

8. It is further agreed between the parties hereto that in the event said property or any portion thereof is sold under conditional sales contracts, all sums received by said parties of the first part, after deducting 21% of total sales price, shall be paid to and are hereby assigned to said party of the second part, until such sums shall pay said party of the second part for all work and improvements, provided, however, that said parties of the first part may retain from the last payments made under such contract of sale a sum equal to the release price of such property sold, which sums shall be used only to obtain the release of said property.

9. It is further agreed that in the event said property or any portion thereof shall be sold and title transferred, said parties of the first part shall and hereby agree to pay from the first money received, the release price of said

property sold, and thereafter not to retain more than 21% of the sale price of said property, and thereafter any and all sums received from the sale of said property shall be paid immediately to said party of the second part, until such sums shall pay said party of the second part for all work and improvements, and said sums are hereby transferred and assigned to said party of the second part, and when said sums have been paid to said party of the second part, or the trust deed, or mortgage, securing the total purchase price of said property sold have been assigned to said party of the second part as security for the payment of said improvements, said party of the second part agrees, upon written demand, to release all claims he may have against such property so that clear title may be passed, subject to such Trust Deeds or mortgages assigned to him as security, however, nothing in this paragraph shall be construed as a waiver of the terms and conditions of Paragraphs 10, 11, and 12 hereof.

10. Said first parties further agree not to sell or contract for the sale of said property or any part thereof at a price less than enough to pay the proportionate cost of all encumbrances against said property plus 21 per cent. of the total sale price, and in addition thereto an amount equal to two and one-half times the proportionate cost of all improvements, whether completed or uncompleted, and no sale shall be made where title is conveyed and a trust deed is accepted as security for the purchase price unless at least  $33 \frac{1}{3}$  per cent. of the total purchase price is paid at the time title is conveyed, and such trust deeds shall be paid within three years in installments of not less than one-third each year and shall bear interest at



not less than 7 per cent. per annum, and no sale on conditional contract shall be made unless 25 per cent. of the purchase price is paid at the time the contract is entered into and the balance shall bear interest at not less than 7 per cent. per annum, and not less than one-third of such balance shall be paid each year.

11. Said parties of the first part further agree in the event said sums paid to said party, as hereinbefore provided, do not amount to one-half of the total cost of all work and improvements completed at the end of six months from date hereof, to immediately pay to said party of the second part the difference between the amount paid and one-half of the total cost of completed work and improvements.

12. Said parties of the first part further agree, within one year from the date hereof, to pay said party of the second part for all work and improvements completed at the above mentioned unit cost basis, and in the event all of said work and improvements are not completed within one year from date, to pay for same at the time of completion.

13. In order to secure the payment of all sums herein provided and faithful performance of all of the terms, covenants and conditions herein set forth upon the part of the said parties of the first part, the said parties of the first part do hereby transfer and assign to the said party of the second part, all of their right, title and interest in and to the within mentioned and described real property.

14. Said party of the second part further agrees that when the sums provided in Paragraphs 8, 11 and 12 have been received by him, he will, upon written demand, re-

lease any and all claims or liens he may have against that portion of said land, provided, however, nothing in this paragraph shall be construed as a waiver of the terms and conditions provided in paragraph 9 hereof.

15. Parties of the first part agree during the continuance of this agreement to appear in and defend any action or proceeding purporting to effect any of the herein mentioned property or the security or the interest of the party of the second part, and to pay all costs and expenses, including cost of evidence of trial and attorney's fees in a reasonable sum, in any action or proceeding in which said second party may appear, to protect said property or the security or interest of said party of the second part, including the enforcement of his rights under this contract.

16. Acceptance by said party of the second part of any sum in payment of any indebtedness after the date when the same is due, shall not constitute a waiver of the right either to require prompt payment when due of all other sums, or to declare default as herein provided for failure so to pay, or to perform any of the covenants or conditions contained herein.

17. Said parties of the first part hereby agree to deliver monthly to the said party of the second part at his place of business, 366 East 58th Street, in the City of Los Angeles, California, a written statement of a certified public accountant showing:

- (a) Total property sold and description and size of same.
- (b) To whom sold.
- (c) Selling price, amount paid and balance to be paid on each purchase.

18. Should breach or default be made by said parties of the first part in payment of any indebtedness or any performance of any obligation, covenant, promise, or agreement herein mentioned, then said party of the second part may at his option declare all sums due for all work completed, and in addition thereto collect such damages as he may sustain, and may refuse to continue the work of installing and furnishing improvements for the rest of said property, or said party of the second part may at his option take possession of said property, and make such improvements as he deems best and sell said property or any part thereof, and the proceeds from the sale of said property shall be paid as follows:

- First. Payment of encumbrances against that portion of the land sold.
- Second. Payment of total cost of improvements.
- Third. Total cost of selling said property, and any remaining sums thereafter shall be divided equally between the parties thereto.

IN WITNESS WHEREOF, The parties have hereto set their hands and seals the day and year first above written.

CHARLES STONE, *Trustee*

CHARLES STONE

F. A. ARBUCKLE by CHARLES STONE *Atty. in fact*

JOHN M. PRATT by CHARLES STONE *Atty. in fact*

W. I. NORCROSS by CHARLES STONE *Atty. in fact*

JAMES WESTERVELT

.....  
.....  
.....  
.....

Parties of the First Part.

GEO. H. OSWALD.

Party of the Second Part.

STATE OF CALIFORNIA,  
County of Los Angeles—ss.

On this 19th day of November, in the year 1925, A. D., before me, Anne Morgan a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Charles Stone and Charles Stone Trustee, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

ANNE MORGAN,  
Notary Public in and for Los Angeles  
County, State of California.

(NOTARIAL SEAL)

My Commission expires March 3, 1929.

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[TITLE OF COURT AND CAUSE.]

No. 8547-H.

OBJECTIONS TO THE CLAIM OF  
GEORGE OSWALD.

John D. Beyer is the duly appointed, qualified and acting Trustee of the above named bankrupt, and as such, objects to the allowance of the claim of GEORGE OSWALD for One Hundred Fifty Two Thousand Nine Hundred Seventy-eight and 43/100 (\$152,978.43) Dol-

lars heretofore filed but not yet allowed herein, upon the following grounds, to wit:

That the books of the Beverlyridge Company do not show that this amount is due.

JOHN D. BEYER

*Trustee*

STATE OF CALIFORNIA

County of Los Angeles—ss.

John D. Beyer, being first duly sworn on oath deposes and says: That the statements contained in the foregoing Objections to Claims are true, according to the best of his knowledge, information and belief.

JOHN D. BEYER

*Trustee*

Subscribed and sworn to before me this 6 day of April, 1927.

(SEAL)

LOUISE HUDSON

Notary Public in and for the State of California, County of Los Angeles.

(Endorsed): Filed Apr 5 1927 at.....Min. past 4 o'clock, P.M. Earl E. Moss, Referee, Louise Hudson, Clerk.

(Endorsed): Filed Jan 9 1929 at.....min. past 4 P. M. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H

REFEREE'S CERTIFICATE ON PETITION  
FOR REVIEW.*To the Honorable, the Judges of the United States  
District Court, in and for the Southern District of  
California, Southern Division:*

I, Earl E. Moss, Referee in Bankruptcy, to whom the above entitled proceedings were referred, do hereby certify.

That in the course of the proceedings *on* Order was made and entered on the 6th day of December, 1928, as follows:

“IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN DIVISION

In the Matter of	)	No. 8547-H (Claim of George
	)	Oswald)
BEVERYRIDGE COMPANY,	)	
	)	FINDINGS OF FACT AND
Bankrupt.	)	CONCLUSIONS OF LAW.

This matter coming on regularly to be heard before me on the 14th day of November, 1928, John D. Beyer, Trustee for the Bankrupt herein, appearing to contest this claim, and Lorrin Andrews, appearing as his attorney, and George Oswald appearing for his claim, and George D. Blair as attorney representing said claimant, and the Court having heard the evidence produced by the claimant and by the Trustee, and having heard argument of counsel, and the Trustee having admitted that the sum of Three Hundred, Two and 43/100 Dollars

(\$302.43) advanced by claimant, George Oswald, has been loaned to the Beverlyridge Company, now bankrupt, and was a just and lawful claim against said bankrupt, and having contested the balance of the claim herein, this Court finds as follows:

## FINDINGS OF FACT.

### I.

That on the 16th day of June, 1926, an involuntary petition in bankruptcy was filed against the Beverlyridge Company, the bankrupt herein, in the United States District Court, in and for the Southern District of California, Southern Division.

### II.

That on the 9th day of July, 1926, the said United States District Court, in and for the Southern District of California, Southern Division, adjudged the said Beverlyridge Company a Bankrupt.

### III.

That on the 9th day of August, 1926, John D. Beyer was elected Trustee of said Bankrupt estate, and ever since said time has been and now is the Trustee of said Bankrupt estate.

### IV.

The Court finds that on or about the 19th day of November, 1925, a contract was drawn, the parties to which were as follows: Charles Stone, Trustee, Charles Stone and Clara F. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. I. Norcross, an unmarried man, being the parties of the first part, and claimant,

George H. Oswald, being party of the second part. That said agreement is filed with the records of the case and known as claimant's Exhibit 3. That the agreement was signed by Charles Stone, Trustee, Charles Stone, F. A. Arbuckle, by Charles Stone, attorney in Fact, John M. Pratt, by Charles Stone, Attorney in Fact, W. I. Norcross, by Charles Stone, Attorney in Fact, and James Westervelt, as parties of the first part, and George H. Oswald, as party of the second part. Said contract is filed as an exhibit in this case and marked claimant's Exhibit 3.

## V.

The Court finds from the evidence that all of the parties of the first part, except W. I. Norcross, were, at the time the agreement was made and of its execution, married men.

## VI.

The Court finds that the interest of Charles Stone in the property mentioned in said agreement was a community interest in which his wife shares, as community property.

## VII.

The Court finds that F. A. Arbuckle, John M. Pratt and W. I. Norcross, by a certain power of attorney filed with a trust executed in the matter, authorized Charles Stone to execute agreements of the character of the agreement entered into in claimant's Exhibit 3, upon their behalf.

## VIII.

The Court finds that there is no evidence empowering Charles Stone to sign the agreement on behalf of the wives of the various parties, nor did he so sign, nor is



there any evidence that he claimed to represent said wives.

IX.

The Court finds that Clara F. Stone was the wife of Charles Stone at the time of the execution of the agreement, and at the time the real property was acquired by her husband, and that she never executed the agreement, marked claimant's Exhibit 3.

X.

The Court finds that on the 31st day of December, 1925, the claimant's, George Oswald's, attorney wrote Mr. Stone as follows:

"Mr. George Oswald has requested that I communicate with you in regard to the following matters:

If you have secured the signatures of the parties of the first part to your contract with George H. Oswald will you kindly forward the same to me.

Will you also kindly forward the plans and profiles, and obtain the permits necessary to do the work and forward copies of the same to me, so that I can immediately take the matter up with Mr. Oswald."

XI.

The Court finds that on January 5, 1926, Charles Stone wrote George D. Blair, the claimant's attorney, as follows:

"Your letter of Dec. 31st with reference to the Oswald improvement contract, received.

We have obtained the signatures of all of the parties to the contract with the exception of one, which will necessitate a trip to Santa Monica on the part of the writer and this will be done at the first possible moment.

The contract which we are to deliver to you will supplant the original contract which was signed by

the writer under a trust agreement and power of attorney for all the partners of the Beverly-Ridge Company. . . .”

## XII.

The Court finds that on January 23, 1926, George D. Blair, attorney for the claimant, George Oswald, wrote the Beverlyridge Estate as follows:

“On December 21st I wrote you and inquired if you had secured the signature of the parties of the first part to your contract with George H. Oswald. A few days later, I saw you at Mr. Castle’s and you stated that you expected to have all the signatures within a day or two. As yet, I have not received the contract.

Mr. Oswald has informed me that the plans and profiles and necessary permits to do the work have not been forwarded to him.

I would like to call your attention to the fact that Mr. Oswald is contemplating the undertaking of other large contracts in the near future, and as a result would like to know if the above matters have been taken care of, and if not when they will be. Mr. Oswald feels that if this matters is not taken care of within the next few days, he will have to refuse to accept the contract.”

## XIII.

The Court finds that the contract, marked claimant’s Exhibit 3, and dated the 19th day of November, 1925, never became effective because of the absence of the signatures of all of its parties, and the claimant, George Oswald did not consent to the acceptance of the contract without the signature of all of the parties named herein, and did in fact refuse to consider it in force and proceed with the work.

## XIV.

The Court finds that George Oswald, claimant never

did any work under said contract dated the 19th day of November, 1925, and marked claimant's Exhibit 3.

XV.

The Court finds that George Oswald is entitled to Three Hundred, Two and 43/100 Dollars (\$302.43), which he loaned said bankrupt on the 8th day of December, 1925, to enable the bankrupt to pay its telephone bill.

CONCLUSIONS OF LAW.

(1) That George Oswald is entitled to the sum of Three Hundred, Two and 43/100 Dollars (\$302.43) from said bankrupt, being money loaned by him to said bankrupt to enable them to pay their telephone bill.

(2) That George Oswald is entitled to no damages from said Bankrupt.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED, That George Oswald, is entitled to the sum of Three Hundred, Two and 43/100 (\$302.43) Dollars from said Bankrupt.

Dated this 6th day of December, 1928.

EARL E. MOSS,

*Referee in Bankruptcy.*"

At the time of the decision in this matter an opinion was rendered herein and the reasons for the decision were set forth. The said opinion, to which the Court's attention is respectfully directed is as follows:

“IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

In the Matter of )  
 ) OPINION ON CLAIMS  
BEVERLYRIDGE COMPANY, ) OF RICHARD CASTLE  
 ) AND GEORGE OSWALD.  
Bankrupt. )

Appearances:

Lorrin Andrews, Esq. representing the Trustee.

George DeLany Blair, Esq. representing the Claimants.

On November 5th, 1925, Charles Stone, as the managing director of the bankrupt wrote the claimant Richard Castle stating:

“In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers— We herewith beg to state that when this deal is completed, we shall deed to you \$25,000 worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500. and \$1600.”

On December 14th, 1925, the bankrupt, by Charles Stone as trustee, executed a document, the original of which has been filed herein as claimant’s Exhibit 1. This document, after identifying the parties, proceeds as follows:

“Party of the first part, in consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property” etc.

Thereafter a certain tract of land stipulated to con-

tain 31,850 square feet in the Beverlyridge Tract was described. The document ends with the two following provisions:

“It is further understood and agreed that as soon as party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the Tract which contains the above described premises, party of the second part shall quit claim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial re-conveyance of said lots by the trustee under two certain Deeds of Trust, each of which is now a blanket lien on the within described premises and other property.”

Claimant Richard Castle testified that the plat that was shown him divided the piece of property described by metes and bounds in the agreement into three lots. At no time did he offer to pay or tender to anyone the release price of either \$1500 or \$1600 per lot. Approximately five months after the execution of the so-called agreement to convey (Claimant's Exhibit 1) a trust deed which was in existence on the property at the time of the execution of the letter of November 5th (Claimant's Exhibit 2) and the agreement of December 14th, was foreclosed, thereby eliminating any claims that this claimant might have in the real property. This claimant at all times had knowledge of the financial condition of

the bankrupt, and in fact part of his claim includes the sum of \$880.00 which he loaned to the bankrupt to pay salaries. He also knew of the existence of the encumbrances on the real property of the bankrupt.

The trustee contends first that there was no consideration for the agreement of December 14th, 1925, agreeing to convey the real property to the bankrupt, by reason of the fact that first, the services purported to have been performed by the claimant in securing the execution by George H. Oswald of an agreement with the bankrupt for the making of certain improvements on its real property, were not complete, because of the fact that all the members of the bankrupt copartnership, and their wives, the property being community real property, did not sign the agreement with Oswald. Claimant however proved that Oswald executed the agreement yet it is unquestionably true that in the absence of its execution by all of the parties thereto he could consider it void as to himself, and in fact did so treat it later. Eliminating from consideration the question of whether or not the form of agreement was satisfactory to all the members of the bankrupt, not having been signed by all of them and some of them not being present as witnesses to testify concerning its contents, it was signed by Oswald and some of the bankrupts. Under a trust agreement executed by the various members of the bankrupt firm, Charles Stone was appointed trustee with authority to make certain contracts upon the bankrupt's behalf. It was urged that the bankrupt or its trustee can not take advantage of the failure of some of its members to sign the agreement after having authorized its trustee to perform certain acts upon its part, still the authorization was not com-

plete because it concerned community real property and the trust agreement was itself not signed by the wives of all the parties.

There are, however, two other more important questions, either of which require the disallowance of this claim. It will be noted that the letter of November 5th contains the clause, "We herewith beg to state that when this deal is completed." The "deal" to which the parties had reference was the construction of the improvements on the tract of land in order that it might be sold to the public. While it is true that, to a certain extent, the bankrupt recognized the procuring of the execution of the contract by Oswald as in some measure performing the services agreed to be rendered by him, which recognition is proved by the execution of the agreement of December 14th, 1925, yet this latter agreement is not an actual conveyance but only an agreement to convey. No time limit is set forth as to when the property shall be conveyed but at the conclusion of the agreement we find the two clauses above quoted requiring reconveyances after the approval and recordation of the map of the tract and requiring the claimant at such time to pay the release price to free the property from the lien of the trust deeds with which it was encumbered. It is therefore clear that it was the intention of the parties that the claimant, Richard Castle, should not be entitled to the property involved until the whole "deal" had been completed, which would require the installation of the improvements, the recordation of the map and the property ready for sale to the public. This stage in the proceedings was never reached, and it was the contention of counsel at the hearing that the agreement of December

14th, was in effect a conveyance by the bankrupt to the claimant, Richard Castle, and Castle would be guilty of laches, having with knowledge of the insolvent condition of the bankrupt and the existence of the encumbrances on the property, failed to tender to the trustee under the trust deeds the consideration as set forth in the letter of November 5th, 1925, for which he could have secured a release of the property described, thus permitting his interest to be forfeited by a foreclosure of the trust deed. Oswald refused to comply with his agreement and the bankrupt received nothing of value by reason of the services rendered by Richard Castle, whose claim should be disallowed.

Consolidated with the hearing of the claim of Richard Castle was the claim of George H. Oswald. This agreement is evidenced herein as claimant's Exhibit 3, and provides for the doing of certain improvement work upon the tract of land owned by the bankrupt at a cost of approximately \$500,000.00. The parties of the first part in the agreement are Charles Stone, trustee, Charles Stone and Clara F. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. I. Norcross, an unmarried man, the claimant George H. Oswald being the party of the second part. The agreement was signed by Charles Stone, trustee, Charles Stone, F. A. Arbuckle by Charles Stone, attorney in fact, John M. Pratt by Charles Stone, attorney in fact, W. I. Norcross by Charles Stone, attorney in fact and James Westervelt, as parties of the first part, and George H. Oswald. It appeared from the evidence that all of the parties of the



first part except Norcross were married at the time of the execution of the agreement and by the testimony of Stone that his interest in the property was community property. Arbuckle, Pratt and Norcross by a certain power of attorney filed with the trust executed in the matter, authorized Charles Stone to execute agreements of this character upon their behalf. No evidence was introduced empowering Charles Stone to sign the agreement upon behalf of the wives of the various parties, and in fact, he does not even purport to so sign. There are two questions involved, first, whether or not the wives of the parties of the first part are necessary parties to the agreement, without whose signatures the party of the second part could not be bound, and second, whether the claimant, George H. Oswald, refused to consider the agreement in effect without the signatures of these parties. Without regard to the wives of the other parties, it is clear that Clara F. Stone was the wife of Charles Stone at the time of the execution of the agreement and at the time the real property was acquired and that the property was community property, and that she had not executed the agreement. Under Section 172 A of the Civil Code of this state an agreement for the transferring or encumbering of any interest in real community property is void unless signed by both spouses. Paragraph 13 of the agreement purports to transfer and assign to the claimant all the right, title and interest of the bankrupt as security for the performance of the terms of the agreement upon their part.

Furthermore, the agreement appears to be one provided to be executed by certain parties. The elimination of one or more parties from the agreement without the

consent of the other party would constitute a material alteration rendering it void. It is clear from the evidence that the claimant, George H. Oswald, did not consent to the alteration of the agreement or waive the signatures of the wives of the various parties. On December 31st, 1925, Mr. Oswald's attorney wrote Mr. Stone as follows:

"Mr. George Oswald has requested that I communicate with you in regard to the following matters:

If you have secured the signatures of the parties of the first part to your contract with George H. Oswald, will you kindly forward the same to me.

Will you also kindly forward the plans and profiles, and obtain the permits necessary to do the work and forward copies of the same to me, so that I can immediately take the matter up with Mr. Oswald."

On January 5th, 1926, Charles Stone wrote Mr. Blair, the claimant's attorney, as follows:

"Your letter of Dec. 31st with reference to the Oswald improvement contract, received.

We have obtained the signatures of all of the parties to the contract with exception of one, which will necessitate a trip to Santa Monica on the part of the writer and this will be done at the first possible moment.

The contract which we are to deliver to you will supplant the original contract which was signed by the writer under a trust agreement and power of attorney for all the partners of the Beverly-Ridge Company." . . .

While the above communication refers to the signatures of the parties having been obtained to a contract, yet no evidence was introduced showing its execution and

delivery. Furthermore, had this new contract been delivered, it is apparent from the letter of January 5th that it was a different agreement than that of November 19, 1925. On January 23rd Mr. Blair wrote the bankrupt as follows:

“On December 21st I wrote you and inquired if you had secured the signature of the parties of the first part to your contract with George H. Oswald. A few days later, I saw you at Mr. Castle’s and you stated that you expected to have all the signatures within a day or two. As yet, I have not received the contract.

Mr. Oswald has informed me that the plans and profiles and necessary permits to do the work have not been forwarded to him.

I would like to call your attention to the fact that Mr. Oswald is contemplating the undertaking of other large contracts in the near future, and as a result would like to know if the above matters have been taken care of, and if not when they will be. Mr. Oswald feels that if this matter is not taken care of within the next few days, he will have to refuse to accept the contract.”

It clearly appears that the claimant Oswald did not consent to the acceptance of the contract without the signature of all the parties named therein, and did in fact refuse to consider it in force and proceed with the work. While it is undoubtedly true that he had an additional reason, that the plans and profiles had not been filed with the proper authorities nor the necessary permits issued to enable him to proceed with the work according to law, yet the contract never became effective because of the absence of the signatures of all of its parties. No work was done by Mr. Oswald under the contract, and the bankrupt received nothing of value

from him. His claim is for profits he alleges would have accrued to him had he completed the contract. Counsel for the trustee will kindly prepare findings and orders disallowing both claims under consideration.

Dated November 27, 1928.

EARL E. MOSS,

*Referee in Bankruptcy.*"

The question for determination is whether or not said order is a proper order.

That on the 17th day of December, 1928, petition for review was filed by George H. Oswald, through his attorney, Geo. D. Blair, Esq., which was granted and which petition for review is hereto attached.

The Referee is transmitting with this Certificate for Review a transcript of the testimony and proceedings had before him at the time of the hearing of the said matter.

I hand up herewith for the information of the Judges, the following papers:

1. Petition for Review
2. Proof of Unsecured Debt
3. Objections to claim of George Oswald
4. Opening brief of George H. Oswald in support of claim of unsecured debt.
5. Brief of trustee in opposition to said claim.

Dated - January 8, 1929.

EARL E. MOSS'

*Referee in Bankruptcy.*

[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H.

REFEREE'S CERTIFICATE ON PETITION  
FOR REVIEW.

*To the Honorable, the Judges of the United States District Court, in and for the Southern District of California, Southern Division:*

I, Earl E. Moss, Referee in Bankruptcy, to whom the above entitled proceedings were referred, do hereby certify:

That in the course of the proceedings an Order was made and entered on the 6th day of December, 1928, as follows:

“IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF  
CALIFORNIA SOUTHERN  
DIVISION

No. 8547-H—(Claim of Richard Castle)  
FINDINGS OF FACT AND CONCLUSIONS  
LAW.

In the Matter of BEVERLYRIDGE COMPANY,  
Bankrupt.

This matter coming on regularly to be heard before me on the 14th day of November, 1928, John D. Beyer, Trustee for the Bankrupt herein, appearing to contest this claim, and Lorrin Andrews, appearing as his attorney, and Richard Castle appearing for his claim, and George D. Blair as attorney representing said claimant, and the Court having heard the evidence produced by the claimant and by the Trustee, and having heard argument of counsel, and the Trustee having admitted that

the sum of Eight Hundred, Eighty and no/100 Dollars (\$880.00) advanced by claimant, Richard Castle, has been loaned to the Beverlyridge Company, now bankrupt, and was a just and lawful claim against said bankrupt, and having contested the balance of the claim herein, this Court finds as follows:

### FINDINGS OF FACT

#### I.

That on the 16th day of June, 1926, an involuntary petition in bankruptcy was filed against the Beverlyridge Company, the bankrupt herein, in the United States District Court, in and for the Southern District of California, Southern Division.

#### II.

That on the 9th day of July, 1926, the said United States District Court, in and for the Southern District of California, Southern Division, adjudged the said Beverlyridge Company a Bankrupt.

#### III.

That on the 9th day of August, 1926, John D. Beyer was elected Trustee of said Bankrupt estate, and ever since said time has been and now is the Trustee of said Bankrupt estate.

#### IV.

That on the 5th day of November, 1925, Charles Stone, acting as Managing Director of the Beverlyridge Company, a co-partnership, wrote the claimant, Richard Castle, stating:

“In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers— We herewith beg to state that when this deal is completed we shall deed to you \$25,000 worth of

property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500 and \$1600."

V.

That on December 14, 1925, the Beverlyridge Company, by Charles Stone as Trustee, executed a document, the original of which has been filed in connection with this claim, as claimant's Exhibit 1. That this document, after identifying the parties, proceeds as follows:

"Party of the first part, in consideration of a valuable sum in dollars, to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property," etc.

Thereafter a certain tract of land stipulated to contain 31,850 square feet in the Beverlyridge Tract was described. That the said document ends with the two following provisions:

"It is further understood and agreed that as soon as the party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the tract which contains the above described premises, party of the second part shall quitclaim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the trustee under two certain Deeds of Trust, each

of which is now a blanket lien on the within described premises and other property.”

#### VI.

That the plat shown claimant, Richard Castle, divided the piece of property described by metes and bounds in the agreement set forth in the last finding, into three lots. That at no time did said claimant, Richard Castle, offer to pay or tender to anyone the release price of either \$1500, or \$1600, per lot.

#### VII.

That on or about the.....day of April, 1926, one of the Trust Deeds mentioned in the agreement of December 14, 1925, which was in existence on the property at the time of the execution of the letter of November 5, 1925, and the agreement of December 14, 1925, was foreclosed, and that thereby this claimant lost any claim that he might have in the real property mentioned in said agreement of December 14th.

#### VIII.

The Court finds that at all times the claimant had knowledge of the financial condition of the bankrupt, and loaned the sum of Eight Hundred and Eighty Dollars (\$880.00) to the bankrupt, at its solicitation, to pay salaries which it was unable to pay, and at all times the claimant knew of the existence of the Trust Deeds upon the real property of the bankrupt, including the property to be turned over to him.

#### IX.

The Court finds that the services purported to have been performed by the claimant were to secure the execution by George H. Oswald of an agreement with the



bankrupt for the making of certain improvements on its real property.

X.

The Court finds that while a purported agreement to this effect was signed by George Oswald, it was never completely executed, in that, it was not signed by all the bankrupts, nor was it signed by all the parties to this agreement, to-wit: the wives of the partners comprising the Beverlyridge Company, the bankrupt herein.

XI.

The Court finds that the deal which, when completed, was to entitle the claimant to \$25,000 worth of property in Beverlyridge, was never completed, and that said claimant did not perform any services for the Beverlyridge Company in accordance with his agreement.

XII.

The Court finds that George H. Oswald refused to comply with the terms of the agreement which he had signed, but which was incomplete as to the signatures of others, and that the bankrupt has received nothing of value by reason of the services rendered by Richard Castle.

XIII.

The Court finds that Richard Castle is entitled to Eight Hundred and Eighty Dollars (\$880.00), which he loaned said bankrupt estate to permit it to pay certain bills and expenses, and for which he has never been repaid.

CONCLUSIONS OF LAW

(1) That said Richard Castle has no claim against the Bankrupt estate for \$25,000, or any other sum, under

the agreements of November 5, 1925, or December 14, 1925, and has not been damaged in the sum of \$25,000 or any sum whatsoever, and his claim for damages therefor is disallowed.

(2) That the Bankrupt estate owes to Richard Castle the sum of Eight Hundred and Eighty (\$880.00) Dollars, loaned to said bankrupt estate by him to help it pay office-help and expenses.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED, that Richard Castle be allowed a claim against the bankrupt, the Beverlyridge Company, in the sum of Eight Hundred and Eighty Dollars (\$880.00).

Dated this 6th day of December, 1928.

EARL E. MOSS,

*Referee in Bankruptcy.*"

At the time of the decision in this matter an opinion was rendered herein and the reasons for the decision were set forth. The said opinion, to which the Court's attention is respectfully directed is as follows:

"IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF  
CALIFORNIA SOUTHERN  
DIVISION

In the Matter of BEVERLYRIDGE COMPANY,  
Bankrupt.

OPINION ON CLAIMS OF RICHARD CASTLE  
AND GEORGE OSWALD.

Appearances:

Lorrin Andrews, Esq., representing the Trustee.

George DeLany Blair, Esq., representing the Claimants.

On November 5th, 1925, Charles Stone, as the man-

aging director of the bankrupt wrote the claimant Richard Castle stating:

“In connection with your efforts on our behalf on obtaining contract for us with Oswald Brothers— We herewith beg to state that when this deal is completed, we shall deed to you \$25,000 worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500.00 and \$1600.”

On December 14th, 1925, the bankrupt, by Charles Stone as trustee, executed a document, the original of which has been filed herein as claimant's Exhibit 1. This document, after identifying the parties, proceeds as follows:

“Party of the first part, in consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property” etc.

Thereafter a certain tract of land stipulated to contain 31,850 square feet in the Beverlyridge Tract was described. The document ends with the two following provisions:

“It is further understood and agreed that as soon as party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the Tract which contains the above described premises, party of the second part shall quitclaim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the

time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the trustee under two certain Deeds of Trust, each of which is now a blanket lien on the within described premises and other property.”

Claimant Richard Castle testified that the plat that was shown him divided the piece of property described by metes and bounds in the agreement into three lots. At no time did he offer to pay or tender to anyone the release price of either \$1500 or \$1600 per lot. Approximately five months after the execution of the so-called agreement to convey (Claimant's Exhibit 1) a trust deed which was in existence on the property at the time of the execution of the letter of November 5th (Claimant's Exhibit 2) and the agreement of December 14th, was foreclosed, thereby eliminating any claims that this claimant might have in the real property. This claimant at all times had knowledge of the financial condition of the bankrupt, and in fact part of his claim includes the sum of \$880.00 which he loaned to the bankrupt to pay salaries. He also knew of the existence of the encumbrances on the real property of the bankrupt.

The trustee contends first that there was no consideration for the agreement of December 14th, 1925, agreeing to convey the real property to the bankrupt, by reason of the fact that first, the services purported to have been performed by the claimant in securing the execution by George H. Oswald of an agreement with the bankrupt for the making of certain improvements on its real property, were not complete, because of the fact that all the members of the bankrupt co-partnership, and

their wives, the property being community real property, did not sign the agreement with Oswald. Claimant, however, proved that Oswald executed the agreement yet it is unquestionably true that in the absence of its execution by all of the parties thereto he could consider it void as to himself, and in fact did so treat it later. Eliminating from consideration the question of whether or not the form of agreement was satisfactory to all the members of the bankrupt, not having been signed by all of them and some of them not being present as witnesses to testify concerning its contents, it was signed by Oswald and some of the bankrupts. Under a trust agreement executed by the various members of the bankrupt firm, Charles Stone was appointed trustee with authority to make certain contracts upon the bankrupt's behalf. It was urged that the bankrupt or its trustee can not take advantage of the failure of some of its members to sign the agreement after having authorized its trustee to perform certain acts upon its part, still the authorization was not complete because it concerned community real property and the trust agreement was itself not signed by the wives of all parties.

There are, however, two other more important questions, either of which require the disallowance of this claim. It will be noted that the letter of November 5th contains the clause, "We herewith beg to state that when this deal is completed." The "deal" to which the parties had reference was the construction of the improvements on the tract of land in order that it might be sold to the public. While it is true that, to a certain extent, the bankrupt recognized the procuring of the execution of the contract by Oswald as in some measure performing the

services agreed to be rendered by him, which recognition is proved by the execution of the agreement of December 14th, 1925, yet this latter agreement is not an actual conveyance but only an agreement to convey. No time limit is set forth as to when the property shall be conveyed but at the conclusion of the agreement we find the two clauses above quoted requiring reconveyances after the approval and recordation of the map of the tract and requiring the claimant at such time to pay the release price to free the property from the lien of the trust deeds with which it was encumbered. It is therefore clear that it was the intention of the parties that the claimant, Richard Castle, should not be entitled to the property involved until the whole "deal" had been completed, which would require the installation of the improvements, the recordation of the map and the property ready for sale to the public. This stage in the proceedings was never reached, and it was the contention of counsel at the hearing that the agreement of December 14th, was in effect a conveyance by the bankrupt to the claimant, Richard Castle, and Castle would be guilty of laches, having with knowledge of the insolvent condition of the bankrupt and the existence of the encumbrances on the property, failed to tender to the trustee under the trust deeds the consideration as set forth in the letter of November 5th, 1925, for which he could have secured a release of the property described, thus permitting his interest to be forfeited by a foreclosure of the trust deed. Oswald refused to comply with his agreement and the bankrupt has received nothing of value by reason of the services rendered by Richard Castle, whose claim should be disallowed.

Consolidated with the hearing of the claim of Richard Castle was the claim of George H. Oswald. This agreement is evidenced herein as claimant's Exhibit 3, and provides for the doing of certain improvement work upon the tract of land owned by the bankrupt at a cost of approximately \$500,000.00. The parties of the first part in the agreement are Charles Stone, trustee, Charles Stone and Clara F. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. I. Norcross, an unmarried man, the claimant George H. Oswald being the party of the second part. The agreement was signed by Charles Stone, trustee, Charles Stone, F. A. Arbuckle by Charles Stone, attorney in fact, John M. Pratt by Charles Stones, attorney in fact, W. I. Norcross by Charles Stone, attorney in fact and James Westervelt, as parties of the first part, and George H. Oswald. It appeared from the evidence that all of the parties of the first part except Norcross were married at the time of the execution of the agreement and by the testimony of Stone that his interest in the property was community property. Arbuckle, Pratt and Norcross by a certain power of attorney filed with the trust executed in the matter, authorized Charles Stone to execute agreements of this character upon their behalf. No evidence was introduced empowering Charles Stone to sign the agreement upon behalf of the wives of the various parties, and in fact, he does not even purport to so sign. There are two questions involved, first, whether or not the wives of the parties of the first part are necessary parties to the agreement, without whose signatures the party of

the second part could not be bound, and second, whether the claimant, George H. Oswald, refused to consider the agreement in effect without the signatures of these parties. Without regard to the wives of the other parties, it is clear that Clara F. Stone was the wife of Charles Stone at the time of the execution of the agreement and at the time the real property was acquired and that the property was community property, and that she had not executed the agreement. Under Section 172 A of the Civil Code of this state an agreement for the transferring or encumbering of any interest in real community property is void unless signed by both spouses. Paragraph 13 of the agreement purports to transfer and assign to the claimant all the right, title and interest of the bankrupt as security for the performance of the terms of the agreement upon their part.

Furthermore, the agreement appears to be one provided to be executed by certain parties. The elimination of one or more parties from the agreement without the consent of the other party would constitute a material alteration rendering it void. It is clear from the evidence that the claimant, George H. Oswald, did not consent to the alteration of the agreement or waive the signatures of the wives of the various parties. On December 31st, 1925, Mr. Oswald's attorney wrote Mr. Stone as follows:

“Mr. George Oswald has requested that I communicate with you in regard to the following matters:

If you have secured the signatures of the parties of the first part to your contract with George H. Oswald, will you kindly forward the same to me.

Will you also kindly forward the plans and profiles, and obtain the permits necessary to do the work



and forward copies of the same to me; so that I can immediately take the matter up with Mr. Oswald."

On January 5th, 1926, Charles Stone wrote Mr. Blair, the claimant's attorney, as follows:

"Your letter of Dec. 31st with reference to the Oswald improvement contract, received.

We have obtained the signatures of all of the parties to the contract with the exception of one, which will necessitate a trip to Santa Monica on the part of the writer and this will be done at the first possible moment.

The contract which we are to deliver to you will supplant the original contract which was signed by the writer under a trust agreement and power of attorney for all partners of the Beverly-Ridge Company." \* \* \*

While the above communication refers to the signatures of the parties having been obtained to a contract, yet no evidence was introduced showing its execution and delivery. Furthermore, had this new contract been delivered, it is apparent from the letter of January 5th that it was a different agreement than that of November 19, 1925. On January 23rd Mr. Blair wrote the bankrupt as follows:

"On December 21st I wrote you and inquired if you had secured the signatures of the parties of the first part to your contract with George H. Oswald. A few days later, I saw you at Mr. Castle's and you stated that you expected to have all the signatures within a day or two. As yet, I have not received the contract.

Mr. Oswald has informed me that the plans and profiles and necessary permits to do the work have not been forwarded to him.

I would like to call your attention to the fact that Mr. Oswald is contemplating the undertaking of

other large contracts in the near future, and as a result would like to know if the above matters have been taken care of, and if not when they will be. Mr. Oswald feels that if this matter is not taken care of within the next few days, he will have to refuse to accept the contract.”

It clearly appears that the claimant Oswald did not consent to the acceptance of the contract without the signature of all the parties named therein, and did in fact refuse to consider it in force and proceed with the work. While it is undoubtedly true that he had an additional reason, that the plans and profiles had not been filed with the proper authorities nor the necessary permits issued to enable him to proceed with the work according to law, yet the contract never became effective because of the absence of the signatures of all of its parties. No work was done by Mr. Oswald under the contract, and the bankrupt received nothing of value from him. His claim is for profits he alleges would have accrued to him had he completed the contract. Counsel for the trustee will kindly prepare findings and orders disallowing both claims under consideration.

Dated November 27, 1928.

EARL E. MOSS,  
*Referee in Bankruptcy.”*

The question for determination is whether or not said order is a proper order.

That on the 17th day of December, 1928, petition for review was filed by Richard Castle, through his attorney Geo. D. Blair, Esq., which was granted and which petition for review is hereto attached.

The Referee is transmitting with this Certificate for

Review a transcript of the testimony and proceedings had before him at the time of the hearing of the said matter.

I hand up herewith for the information of the Judges, the following papers:

1. Petition for Review.
2. Proof of Unsecured Debt.
3. Objections to the claim of Richard Castle.
4. Brief of trustee of Beverlyridge Company in opposition to said claim.
5. Opening brief of Richard Castle in support of claim of unsecured debt.
6. Exhibits.
7. Transcript.

Dated January 8, 1929.

EARL E. MOSS,  
*Referee in Bankruptcy.*

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[TITLE OF COURT AND CAUSE.]

No. 8547-H

PETITION TO REVIEW REFEREE'S ORDER  
(RICHARD CASTLE)

*To Earl E. Moss, Esq., Referee in Bankruptcy:*

Your petitioner respectfully shows:

That he is a creditor of BEVERLYRIDGE COMPANY, the above named bankrupt, and that his claim has been allowed in part.

That in the course of the proceedings which were had on the 14th day of November, 1928, an order was made upon the 6th day of December, 1928, a copy of which

is hereto annexed, and was made and entered herein. That such order was and is erroneous in that: (1) the findings of fact and conclusions of law are not supported by the evidence; (2) that the order pursuant thereto is contrary to law; (3) the court erred in admitting testimony over the objections of the claimant and (4) the court erred in disallowing a portion of the said claim, and (5) the court erred in refusing to admit testimony of the claimant.

WHEREFORE your petitioner feeling aggrieved because of such order prays that the same may be reviewed as provided in the Bankruptcy Act of 1896 and General Order XXVII.

Dated: Los Angeles, California, December 14th, 1928.

RICHARD CASTLE,  
*Petitioner.*

GEO. D. BLAIR,  
*Attorney for Petitioner.*

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[TITLE OF COURT AND CAUSE.]

No. 8547-H (Claim of Richard Castle)

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This matter coming on regularly to be heard before me on the 14th day of November, 1928, John D. Beyer, Trustee for the Bankrupt herein, appearing to contest this claim, and Lorrin Andrews, appearing as his attorney, and Richard Castle appearing for his claim, and George D. Blair as attorney representing said claimant, and the Court having heard the evidence produced by

the claimant and by the Trustee, and having heard argument of counsel, and the Trustee having admitted that the sum of Eight Hundred Eighty and no/100 Dollars (\$880.00) advanced by claimant, Richard Castle, has been loaned to the Beverlyridge Company, now bankrupt, and was a just and lawful claim against said bankrupt, and having contested the balance of the claim herein, this Court finds as follows:

FINDINGS OF FACT

I.

That on the 16th day of June, 1926, an involuntary petition in bankruptcy was filed against the Beverlyridge Company, the bankrupt herein, in the United States District Court, in and for the Southern District of California, Southern Division.

II.

That on the 9th day of July, 1926, the said United States District Court, in and for the Southern District of California, Southern Division, adjudged the said Beverlyridge Company a Bankrupt.

III.

That on the 9th day of August, 1926, John D. Beyer was elected Trustee of said Bankrupt estate, and ever since said time has been and now is the Trustee of said Bankrupt estate.

IV.

That on the 5th day of November, 1925, Charles Stone, acting as Managing Director of the Beverlyridge Company, a co-partnership, wrote the claimant, Richard Castle, stating:

“In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers—

We herewith beg to state that when this deal is completed we shall deed to you \$25,000 worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500 and \$1600."

V.

That on December 14, 1925, the Beverlyridge Company, by Charles Stone as Trustee, executed a document, the original of which has been filed in connection with this claim, as claimant's Exhibit 1. That this document, after identifying the parties, proceeds as follows:

"Party of the first part, in consideration of a valuable sum in dollars, to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property," etc.

Thereafter a certain tract of land stipulated to contain 31,850 square feet in the Beverlyridge Tract was described. That the said document ends with the two following provisions:

"It is further understood and agreed that as soon as the party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the tract which contains the above described premises, party of the second part shall quitclaim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by

the trustee under two certain Deed of Trust, each of which is now a blanket lien on the within described premises and other property.”

VI.

That the plat shown claimant, Richard Castle, divided the piece of property described by metes and bounds in the agreement set forth in the last finding, into three lots. That at no time did said claimant, Richard Castle, offer to pay or tender to anyone the release price of either \$1500, or \$1600 per lot.

VII.

That on or about the.....day of April, 1926, one of the Trust Deeds mentioned in the agreement of December 14, 1925, which was in existence on the property at the time of the execution of the letter of November 5, 1925, and the agreement of December 14, 1925, was foreclosed, and that thereby this claimant lost any claim that he might have in the real property mentioned in said agreement of December 14th.

VIII.

The Court finds that at all times the claimant had knowledge of the financial condition of the bankrupt, and loaned the sum of Eight Hundred and Eighty Dollars (\$880.00), at its solicitation, to pay salaries which it was unable to pay, and at all times the claimant knew of the existence of the Trust Deeds upon the real property of the bankrupt, including the property to be turned over to him.

IX.

The Court finds that the services purported to have been performed by the claimant were to secure the execution by George H. Oswald of an agreement with the

bankrupt for the making of certain improvements on its real property.

X.

The Court finds that while a purported agreement to this effect was signed by George Oswald, it was never completely executed, in that, it was not signed by all the bankrupts, nor was it signed by all the parties to this agreement, to-wit: the wives of the partners comprising the Beverlyridge Company, the bankrupt herein.

XI.

The Court finds that the deal which, when completed, was to entitle the claimant to \$25,000 worth of property in Beverlyridge, was never completed, and that said claimant did not perform any services for the Beverlyridge Company in accordance with his agreement.

XII.

The Court finds that George H. Oswald refused to comply with the terms of the agreement which he had signed, but which was incomplete as to the signatures of others, and that the bankrupt has received nothing of value by reason of the services rendered by Richard Castle.

XIII.

The Court finds that Richard Castle is entitled to Eight Hundred and Eighty Dollars (\$880.00), which he loaned said bankrupt estate to permit it to pay certain bills and expenses, and for which he has never been repaid.

CONCLUSIONS OF LAW

(1) That said Richard Castle has no claim against the Bankrupt estate for \$25,000, or any other sum, under the agreements of November 5, 1925, or December 14, 1925, and has not been damaged in the sum of \$25,000



or any sum whatsoever, and his claim for damages therefor is disallowed.

(2) That the Bankrupt estate owes to Richard Castle the sum of Eight Hundred and Eighty (\$880.00) Dollars, loaned to said bankrupt estate by him to help it pay office-help and expenses.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED, that Richard Castle be allowed a claim against the bankrupt, the Beverlyridge Company, in the sum of Eight Hundred and Eighty Dollars (\$880.00).

Dated this 6 day of December, 1928.

EARL E. MOSS,

*Referee in Bankruptcy.*

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[TITLE OF COURT AND CAUSE.]

No. 8547-H

PETITION TO REVIEW REFEREE'S ORDER.  
(GEORGE H. OSWALD)

*To Earl E. Moss, Esq., Referee in Bankruptcy:*

Your petitioner respectfully shows:

That he is a creditor of BEVERLYRIDGE COMPANY, the above named bankrupt, and that his claim has been allowed in part.

That in the course of the proceedings which were had on the 14th day of November, 1928, an order was made upon the 6th day of December, 1928, a copy of which is hereto annexed, and was made and entered herein. That such order was and is erroneous in that: (1) the findings of fact and conclusions of law are not supported by the evidence; (2) that the order pursuant thereto is con-

trary to law; (3) the court erred in admitting testimony over the objections of the claimant and (4) the court erred in disallowing a portion of the said claim, and (5) the court erred in refusing to admit testimony of the claimant.

WHEREFORE your petitioner feeling aggrieved because of such order prays that the same may be reviewed as provided in the Bankruptcy Act of 1898 and General Order XXVII.

Dated: Los Angeles, California, December 14th, 1928.

GEO. H. OSWALD,  
*Petitioner.*

GEO. D. BLAIR,  
*Attorney for Geo. H. Oswald.*

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[TITLE OF COURT AND CAUSE.]

No. 8547-H (Claim of George Oswald)

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This matter coming on regularly to be heard before me on the 14th day of November, 1928, John D. Beyer, Trustee for the Bankrupt herein, appearing to contest this claim, and Lorrin Andrews, appearing as his attorney, and George Oswald appearing for his claim, and George D. Blair as attorney representing said claimant, and the Court having heard the evidence produced by the claimant and by the Trustee, and having heard argument of counsel, and the Trustee having admitted that the sum of Three Hundred Two and 43/100 Dollars (\$302.43) advanced by claimant, George Oswald, has

been loaned to the Beverlyridge Company, now bankrupt, and was a just and lawful claim against said bankrupt, and having contested the balance of the claim herein, this Court finds as follows:

## FINDINGS OF FACT

### I.

That on the 16th day of June, 1926, an involuntary petition in bankruptcy was filed against the Beverlyridge Company, the bankrupt herein, in the United States District Court, in and for the Southern District of California, Southern Division.

### II.

That on the 9th day of July, 1926, the said United States District Court, in and for the Southern District of California, Southern Division, adjudged the said Beverlyridge Company a Bankrupt.

### III.

That on the 9th day of August, 1926, John D. Beyer was elected Trustee of said Bankrupt estate, and ever since said time has been and now is the Trustee of said Bankrupt estate.

### IV.

The Court finds that on or about the 19th day of November, 1925, a contract was drawn, the parties to which were as follows: Charles Stone, Trustee, Charles Stone and Clara F. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. I. Norcross, an unmarried man, being the parties of the first part, and claimant, George H. Oswald, being party of the second part. That

said agreement is filed with the records of the case and known as claimant's Exhibit 3. That the agreement was signed by Charles Stone, Trustee, Charles Stone, F. A. Arbuckle, by Charles Stone, Attorney in Fact, John M. Pratt, by Charles Stone, Attorney in Fact, W. I. Norcross, by Charles Stone, Attorney in Fact, and James Westervelt, as parties of the first part, and George H. Oswald, as party of the second part. Said contract is filed as an exhibit in this case and marked claimant's Exhibit 3.

## V.

The Court finds from the evidence that all of the parties of the first part, except W. I. Norcross, were, at the time the agreement was made and of its execution, married men.

## VI.

The Court finds that the interest of Charles Stone in the property mentioned in said agreement was a community interest in which his wife shares, as community property.

## VII.

The Court finds that F. A. Arbuckle, John M. Pratt and W. I. Norcross, by a certain power of attorney filed with a trust executed in the matter, authorized Charles Stone to execute agreements of the character of the agreement entered into in claimant's Exhibit 3, upon their behalf.

## VIII.

The Court finds that there is no evidence empowering Charles Stone to sign the agreement on behalf of the wives of the various parties, nor did he so sign, nor is there any evidence that he claimed to *present* said wives.

IX.

The Court finds that Clara F. Stone was the wife of Charles Stone at the time of the execution of the agreement, and at the time the real property was acquired by her husband, and that she never executed the agreement, marked claimant's Exhibit 3.

X.

The Court finds that on the 31st day of December, 1925, the claimant's, George Oswald's, attorney wrote Mr. Stone as follows:

"Mr. George Oswald has requested that I communicate with you in regard to the following matters:

If you have secured the signatures of the parties of the first part to your contract with George H. Oswald will you kindly forward the same to me.

Will you also kindly forward the plans and profiles, and obtain the permits necessary to do the work and forward copies of the same to me, so that I can immediately take the matter up with Mr. Oswald."

XI.

The Court finds that on January 5, 1926, Charles Stone wrote George D. Blair, the claimant's attorney, as follows:

"Your letter of Dec. 31st with reference to the Oswald improvement contract, received.

We have obtained the signatures of all of the parties to the contract with the exception of one, which will necessitate a trip to Santa Monica on the part of the writer and this will be done at the first possible moment.

The contract which we are to deliver to you will supplant the original contract which was signed by the writer under a trust agreement and power of attorney for all the partners of the Beverly-Ridge Company . . ."

## XII.

The Court finds that on January 23, 1926, George D. Blair, attorney for the claimant, George Oswald, wrote the Beverlyridge Estate as follows:

“On December 21st I wrote you and inquired if you had secured the signature of the parties of the first part to your contract with George H. Oswald. A few days later, I saw you at Mr. Castle’s and you stated that you expected to have all the signatures within a day or two. As yet, I have not received the contract.

Mr. Oswald has informed me that the plans and profiles and necessary permits to do the work have not been forwarded to him.

I would like to call your attention to the fact that Mr. Oswald is contemplating the undertaking of other large contracts in the near future, and as a result would like to know if the above matters have been taken care of, and if not when they will be. Mr. Oswald feels that if this matters is not taken care of within the next few days, he will have to refuse to accept the contract.”

## XIII.

The Court finds that the contract, marked claimant’s Exhibit 3, and dated the 19th day of November, 1925, never became effective because of the absence of the signatures of all of its parties, and the claimant, George Oswald did not consent to the acceptance of the contract without the signature of all of the parties named herein, and did in fact refuse to consider it in force and proceed with the work.

## XIV.

The Court finds that George Oswald, claimant, never did any work under said contract dated the 19th day of November, 1925, and marked claimant’s Exhibit 3.

XV.

The Court finds that George Oswald is entitled to Three Hundred Two and 43/100 Dollars (\$302.43), which he loaned said bankrupt on the 8th day of December, 1925, to enable the bankrupt to pay its telephone bill.

CONCLUSIONS OF LAW

(1) That George Oswald is entitled to the sum of Three Hundred, Two and 43/100 Dollars (\$302.43) from said bankrupt, being money loaned by him to said bankrupt to enable them to pay their telephone bill.

(2) That George Oswald is entitled to no damages from said Bankrupt.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED, That George Oswald is entitled to the sum of Three Hundred, Two and 43/100 (\$302.43) Dollars from said Bankrupt.

Dated this 6th day of December, 1928.

EARL E. MOSS,  
*Referee in Bankruptcy.*

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At a stated term, to wit: The January Term, A. D. 1929, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 18th day of April in the year of our Lord one thousand nine hundred and twenty-nine.

Present: The Honorable Edward J. Henning, District Judge.

In the Matter of Beverly Ridge Co., Bankrupt.

No. 8547-H Bkcy.

The Court having ordered on February 4th, 1929 that review of the order of Referee Moss be submitted on briefs to be filed 10x10x5, and no briefs having been filed, and the Court being cognizant of the three stipulations on file extending time to file briefs, it is by the Court ordered that the findings of the Referee be, and they are hereby affirmed.

70/974

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At a stated term, to wit: The January Term, A. D. 1929, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 3rd day of May in the year of our Lord one thousand nine hundred and twenty-nine.

Present: The Honorable Edward J. Henning, District Judge.

In the Matter of Beverly Ridge Co., Bankrupt.

No. 8547-H Bkcy.

The Court having affirmed the Order of the Referee herein, by order made on April 18th, 1929; no briefs having been filed thereon by counsel, as ordered by the Court on February 2nd, 1929; and thereafter counsel having filed their briefs, and the same having been duly submitted; upon consideration whereof, it is now by the Court ordered that the said Order of the Referee be, and the same is hereby re-affirmed.

71/43.



[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FROM AN ORDER AFFIRMING THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER THEREON OF THE REFEREE IN BANKRUPTCY, REJECTING A PORTION OF THE CLAIM OF RICHARD CASTLE.

*To the Honorable Edward J. Henning, Judge of the United States District Court for the Southern District of California, Central Division:*

The above named claimant, Richard Castle, conceiving himself aggrieved by the order and decree entered on the 18th day of April, 1929, and on the 3rd day of May, 1929, in the above entitled proceeding, affirming the Findings of Fact and Conclusions of Law and order thereon of the Referee in Bankruptcy, rejecting a portion of the claim of Richard Castle, does hereby petition for an appeal from the said order and decrees to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and a citation granted directed to John Beyer, Trustee of the above entitled bankrupt estate, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in said proceeding, duly authenticated, may be transmitted to the

United States Circuit Court of Appeals for the Ninth Circuit.

RICHARD CASTLE,  
*Claimant.*

GEO. D. BLAIR,  
J. GILBERT FALL,

*Attorneys for Claimant.*

(Endorsed): Filed May 17, 1929 at 45 min past 4 o'clock p. m. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H  
ASSIGNMENT OF ERRORS IN RE CLAIM OF  
RICHARD CASTLE

Comes now RICHARD CASTLE, claimant and complainant herein, and files the following assignment of errors on appeal from the orders of this Court dated April 18, 1929, and May 3, 1929.

I.

That the Findings of Fact and Conclusions of Law are not supported by the evidence, and the United States District Court for the Southern District of California, Central Division, erred in finding

(a) (Finding No. X) That while a purported agreement was signed by George Oswald, it was never completely executed, in that, it was not signed by all the bankrupts, nor was it signed by all the parties to this agreement, to-wit: the wives of the partners comprising the Beverlyridge Company, the bankrupt herein.

(b) (Finding No. XI) That the deal which, when

completed, was to entitle the claimant to \$25,000 worth of property in Beverlyridge, was never completed, and that said claimant did not perform any services for the Beverlyridge Company in accordance with his agreement.

(c) (Finding No. XII) That George H. Oswald refused to comply with the terms of the agreement which he had signed, but which was incomplete as to the signatures of others, and that the bankrupt has received nothing of value by reason of the services rendered by Richard Castle.

(d) (Finding No. XIII) That Richard Castle is entitled to Eight Hundred and Eighty (\$880.00) Dollars, which he loaned said bankrupt estate to permit it to pay certain bills and expenses, and for which he has never been repaid.

(e) (Conclusions of Law 1) That said Richard Castle has no claim against the Bankrupt estate for \$25,000, or any other sum, under the agreements of November 5, 1925, or December 14, 1925, and has not been damaged in the sum of \$25,000 or any sum whatsoever, and his claim for damages therefor is disallowed.

(f) (Conclusion of Law 2) That the Bankrupt estate owes to Richard Castle the sum of Eight Hundred and Eighty (\$880.00) Dollars, loaned to said bankrupt estate by him to help it pay office held and expenses.

## II.

That the order pursuant to the findings is contrary to law.

## III.

That the Court erred in admitting testimony over the objections of the claimant.

## IV.

That the Court erred in disallowing a portion of the said claim.

## V.

That the Court erred in refusing to admit testimony of claimant.

WHEREFORE, he prays that the said order may be reversed and his claim allowed as prayed for.

Dated May 17, 1929.

RICHARD CASTLE, *Claimant,*

By GEO. D. BLAIR,

J. GILBERT FALL,

*Attorneys for Claimant.*

(Endorsed): Filed May 17, 1929 at 45 min. past 4 o'clock p. m., R. S. Zimmerman, Clerk, By B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FROM AN ORDER AFFIRMING THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER THEREON OF THE REFEREE IN BANKRUPTCY, REJECTING A PORTION OF THE CLAIM OF GEO. H. OSWALD.

*To the Honorable Edward J. Henning, Judge of the United States District Court for the Southern District of California, Central Division:*

The above named claimant, Geo. H. Oswald, conceiving himself aggrieved by the order and decree entered

on the 18th day of April, 1929, and the 3rd day of May, 1929, in the above entitled proceeding, affirming the Findings of Fact and Conclusions of Law and order thereon of the Referee in Bankruptcy, rejecting a portion of the claim of Geo. H. Oswald, does hereby petition for an appeal from the said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that his appeal may be allowed and a citation granted directed to John Beyer, Trustee of the above entitled bankrupt estate, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and evidence in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

GEO. H. OSWALD,  
*Claimant.*

GEO. D. BLAIR,  
J. GILBERT FALL,  
*Attorneys for Claimant.*

(Endorsed): Filed May 17, 1929 at 45 min past 4 o'clock p. m. R. S. Zimmerman, Clerk, By B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H  
ASSIGNMENT OF ERRORS IN RE CLAIM OF  
GEO. H. OSWALD.

Comes now GEO. H. OSWALD, claimant and complainant herein, and files the following assignment of errors

on appeal from the orders of this Court dated April 8, 1929, and May 3, 1929:

I.

That the Findings of Fact and Conclusions of Law are not supported by the evidence, and the United States District Court for the Southern District of California, Central Division, erred in finding

(a) (Finding No. VI) That the interest of Charles Stone in the property mentioned in the agreement was a community interest in which his wife shares, as community property.

(b) (Finding No. VIII) That there is no evidence empowering Charles Stone to sign the agreement on behalf of the wives of the various parties, nor did he so sign, nor is there any evidence that he claimed to represent said wives.

(c) (Finding No. XIII) That the contract, marked claimant's Exhibit 3, and dated the 19th day of November, 1925, never became effective because of the absence of the signatures of all of its parties, and the claimant, George Oswald did not consent to the acceptance of the contract without the signature of all of the parties named herein, and did in fact refuse to consider it in force and proceed with the work.

(d) (Finding No. XV) That George Oswald is entitled to Three Hundred, Two and  $43/100$  Dollars (\$302.43), which he loaned said bankrupt on the 8th day of December, 1925, to enable the bankrupt to pay its telephone bill.

(e) (Conclusions of Law 1) That George Oswald is entitled to the sum of Three Hundred, Two and  $43/100$  Dollars (\$302.43) from said bankrupt, being money

loaned by him to said bankrupt to enable them to pay their telephone bill.

(f) That George Oswald is entitled to no damages from said bankrupt. (Conclusions of Law 2.)

II.

That the order pursuant to the Findings is contrary to law.

III.

That the Court erred in admitting testimony over the objections of the claimant.

IV.

That the Court erred in disallowing a portion of the said claim.

V.

That the Court erred in refusing to admit testimony of claimant.

WHEREFORE, he prays that the said order may be reversed and his claim allowed, as prayed for.

GEO. H. OSWALD, *Claimant.*

By GEO. D. BLAIR,

J. GILBERT FALL,

*Attorneys for Claimant.*

(Endorsed); Filed May 17 1929 at 45 min past 4 o'clock p. m. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H

(Claim of Richard Castle)

ORDER ALLOWING APPEAL.

IT IS HEREBY ORDERED that the appeal in the above entitled matter to the United States Circuit Court of

Appeals for the Ninth Circuit be and the same is hereby allowed as prayed, and that bond on appeal in the above entitled matter is fixed at \$250.00.

Dated this 17th day of May, 1929.

EDWARD J. HENNING,  
*United States District Judge.*

(Endorsed); Filed May 17, 1929 at 45 min past 4 o'clock p. m. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H  
(Claim of Geo. H. Oswald)  
ORDER ALLOWING APPEAL.

IT IS HEREBY ORDERED that the appeal in the above entitled matter to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed as prayed, and that bond on appeal in the above entitled matter is fixed at \$250.00.

Dated this 17th day of May, 1929.

EDWARD J. HENNING,  
*United States District Judge.*

(Endorsed): Filed May 17, 1929, at 45 min past 4 o'clock p. m. R. S. Zimmerman, Clerk, B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

In Bankruptcy No. 8547-H  
STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED that these claims came on for hearing on the 14th day of November, 1928, before the



Hon. Earl E. Moss, Referee in Bankruptcy, Richard Castle and George H. Oswald, Claimants, being represented by their attorney, George D. Blair, Esq., and John Beyer, Trustee of the Beverlyridge Company, a co-partnership, Bankrupt, being represented by his attorney, Lorrin Andrews, Esq., whereupon the testimony hereinafter set forth was taken.

That it was agreed that a portion of the claim of George H. Oswald, to-wit: Three Hundred Two Dollars (\$302.00) be approved, and a portion of the claim of Richard Castle, to-wit: Eight Hundred Eighty Dollars (\$880.00) be approved. As to the balance of the claim of each party, proof was then produced as follows:

Richard Castle, the claimant was called as a witness on behalf of the claimants, and being duly sworn, testified as follows:

*Direct Examination*

My full name is Richard Castle and I am the claimant in these proceedings. On being shown a contract drawn between Richard Castle and Charles F. Stone, grantor, I state that that is my signature.

Said document was offered and received in evidence and marked Claimant's Exhibit 1, and is in part in words and figures as follows, to-wit:

“AGREEMENT TO CONVEY  
REAL ESTATE.

This Agreement, made this 14th day of December, 1925, by and between CHARLES STONE, as trustee under a Deed and Declaration of Trust dated April 18, 1925, and recorded in the office of the Recorder of Los Angeles County, California, on the 21st day of May, 1925, in Book 4002 of Miscellaneous Records at Page 108, party of the first part, and

RICHARD CASTLE of Los Angeles, California, party of the second part.

Party of the first part, in consideration of a valuable sum in dollars to him in hand paid, receipt of which is hereby acknowledged, does hereby covenant and agree to convey to party of the second part the following real property in the City of Los Angeles, County of Los Angeles, State of California, to-wit: (here the property is described by metes and bounds)

It is expressly understood and agreed, however, by both parties hereto that the deed to be executed by party of the first part pursuant hereto shall contain restrictions as nearly identical as may be with restrictions (1), (2), (3) and (5) and also restrictions similar to restriction No. (4) as contained in all grant deeds heretofore executed by party of the first part conveying any lot or lots in Tract 8080 in the City of Los Angeles, as shown on Map thereof recorded in Book \_\_\_\_\_ of Maps, Page \_\_\_\_\_, in the office of the Recorder of Los Angeles County aforesaid.

It is further understood and agreed that as soon as party of the first part shall have caused to be duly approved and recorded in the office of said Recorder a map or plat of the Tract which contains the above described premises, party of the second part shall quitclaim and reconvey said premises by the same description to party of the first part and party of the first part shall immediately thereupon convey to party of the second part, subject to the uniform restrictions to be incorporated in all conveyances of lots in said proposed tract, the premises hereinabove described by their proper lot and tract numbers.

It is further understood and agreed that at the time of such conveyance party of the second part shall pay and discharge the full release price necessary to secure partial reconveyance of said lots by the trustee under two certain Deeds of Trust, each of which is now a blanket lien on the within described premises and other property.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CHARLES STONE.  
*Trustee*  
*Grantor.*  
RICHARD CASTLE  
*Grantee.*

STATE OF CALIFORNIA  
County of Los Angeles—ss.

Be it remembered that on this 14th day of December, 1925, before me, Gertrude M. Hartman, a notary public in and for said county and state, personally appeared Charles Stone and Richard Castle, each personally known to me and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

GERTRUDE M. HARTMAN,  
*Notary Public in and for the County of*  
*Los Angeles, State of California.*

ENDORSEMENT: Return to Richard Castle, 9116 W. Pico, Los Angeles, Calif., Compared Document—Haynes, Book-Elliott Recorded February 9, 1926, 27 min. past 3 P. M. in Book 5567 at page 250 of Official Records, Los Angeles County, Cal.”

(Witness continuing) This letter dated November 5th was delivered to me by Charles Stone. It is his signature. I saw him write it.

Whereupon the letter dated November 5, 1925, addressed to Mr. Richard Castle and signed by the Beverlyridge Company, Charles Stone, Managing Director was offered and received in evidence as Claimant's Exhibit No. 2, and is in words and figures as follows:

“November 5, 1925

Mr. Richard Castle  
9150 West Pico  
Los Angeles  
Dear Sir:

In connection with your efforts on our behalf in obtaining contract for us with Oswald Brothers— We herewith beg to state that when this deal is completed, we shall deed to you \$25,000. worth of property in Beverlyridge. It is understood that you are to pay the release price on the lots which runs between \$1500. and \$1600.

Very truly yours,

Beverlyridge Company

CHARLES STONE

*Managing Director*”

CS-am

(Witness continuing) Pursuant to the letter dated November 5th, I did not have any transactions with any other person other than Charles Stone in connection with the Beverlyridge. I did endeavor to obtain a contract from Mr. Oswald. The contract with Mr. Oswald was entered into. On being handed a document signed by George H. Oswald, party of the second part; Charles Stone, trustee, Charles Stone, etc., I will state that Mr. Stone signed it. I was there when it was signed. I will also state that George Oswald signed it.

Whereupon the agreement was offered and received in evidence as Claimant's Exhibit 3, over objection of counsel for the trustee, which is in words and figures as follows, to-wit:

“THIS AGREEMENT made and entered into this 18 day of November, A. D. 1925, by and between Charles Stone, Trustee, Charles Stone and Clara D. Stone, his wife, F. A. Arbuckle and Ernestine C. Arbuckle, his wife, John M. Pratt and Dorothy D. Pratt, his wife, James Westervelt and Mary C. Westervelt, his wife, and W. I. Norcross, an un-

married man, parties of the first part, and George H. Oswald, party of the second part, WITNESSETH:

(Here is set forth the improvements to be undertaken by George H. Oswald in the subdivision)

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

CHARLES STONE, *Trustee*

CHARLES STONE

F. A. ARBUCKLE by

CHARLES STONE, *Attorney in fact*

JOHN M. PRATT, by

CHARLES STONE, *Attorney in fact*

W. I. NORCROSS by

CHARLES STONE, *Attorney in fact.*

JAMES WESTERVELT

Parties of the First Part.

GEO. H. OSWALD

Party of the Second Part.

STATE OF CALIFORNIA

County of Los Angeles—ss.

On this 19 day of November, in the year 1925, A. D. before me Anne Morgan a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Charles Stone and Charles Stone, Trustee personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

ANNE MORGAN,

*Notary Public in and for Los Angeles  
County, State of California.*

ENDORSEMENT: Return to Geo. D. Blair, 711 Security Bldg., Los Angeles, California. Recorded November 20 1925, 34 min. past 1 P. M. in Book

5528 at page 81 of Official Records, Los Angeles County, Cal.

Compared—Read by Kline—Document Aitken”

(Witness continuing) That is the contract that I endeavored to obtain from Mr. Oswald for Mr. Stone of the Beverly Ridge Company.

Whereupon Mr. Andrews, attorney for the trustee, objected to the question as calling for conclusion of the witness and the objection was sustained by the Referee.

(Witness continuing) I had conversations with Mr. Stone with reference to obtaining a contract with Mr. Oswald in his office in the Wright and Callendar Building, the date of which was prior to the time of the contract just shown me.

Whereupon Mr. Andrews objected to the form of question asked on the ground that it would vary the terms of the writing.

The Referee called attention to Claimant's Exhibit 1, agreement between Charles Stone and Richard Castle, which sets forth that in consideration of a valuable sum in dollars to him in hand paid, party of the first part agreed to convey certain real property and stated that the consideration could be shown and supplied by other than documentary evidence.

(Witness continuing) Mr. Stone was anxious to have his tract improved. I told Mr. Stone I thought I could get Mr. Oswald to install the improvements complete there and make a satisfactory contract to both parties. Mr. Stone said he would be anxious to enter the deal. I told him I thought I could get Mr. Oswald to take the job if he could give Mr. Oswald a satisfactory contract, and he said he would, and I was to get for that contract

these lots valued at \$25,000.00. I was to get a \$25,000.00 commission and was to take property for my commission, and I was to take these lots subject to release prices of \$1500 to \$1600 a lot. That was mentioned in the letter.

Mr. Blair: Now, did you obtain that contract from Mr. Oswald?

Mr. Andrews: I object to that, your Honor please, as a conclusion.

The Referee: Yes, state what was done.

Mr. Blair: Q. What was done after that?

A. Why, Mr. Oswald agreed—Mr. Oswald and Mr. Stone agreed on a contract.

Mr. Andrews: That of course we object to as a conclusion. We are contesting that there *ever* was a contract legally signed. I have already made the objection, your Honor, contesting anything was done, and I think under the circumstances I will have to insist he testifies what he knows as to what was said and done by the parties. He said "we agreed to do this and that."

The Referee: After your conversation with Mr. Stone, what did you do with reference to Mr. Oswald?

A. Why, I got Mr. Oswald to agree to do this work—

Mr. Andrews: That I certainly object to.

The Referee: Yes.

A. For a certain price.

The Referee: Yes. Tell what documents passed between you and Mr. Oswald and what conversation you had.

A. I took it up with Mr. Oswald and explained the deal and took Mr. Oswald over the property, and Mr. Oswald made prices, checked up the different things, water and gas and sewers and so forth, and made me a

price, and I submitted that price to Mr. Stone and Mr. Stone accepted it. All that I know about Mr. Stone's accepting it is this contract (Claimant's Exhibit 3). I was present at the time the contract was signed and it was signed in Mr. Blair's office. Mr. Westervelt, Mr. Stone, Mr. Oswald and Mr. Blair and I were there. Mr. Stone said he would secure the permits, profiles and necessary engineering and deliver it to Mr. Oswald at his office.

Q. (Mr. Blair): Do you know whether or not Charles Stone ever caused to be recorded in the office of the County Recorder a map or plat of the tract showing the lots you were to receive?

Mr. Andrews: That is objected to as calling for the conclusion of the witness—

(Argument between counsel and Referee):

The Referee: I don't see it would be very material whether they recorded the map or not.

Mr. Blair: If that is your Honor's position, very well. I merely offer that evidence but if that is your Honor's position it covers a subject we need not take up.

(Witness continuing) After that document dated November 19, signed by Charles Stone and George H. Oswald, was executed, the instrument I handed you there, marked Claimant's Exhibit 1, was delivered to me by Mr. Stone.

I have been in the real estate business for about five years and I am familiar with the prices in the district and locality in which this property that was to be conveyed to me was located, and my opinion of the value of that property is \$25,000.00. There were three lots to be conveyed to me and I do not know the numbers of



them as they were described in metes and bounds. The approximate size was 50,000 square feet, and divided into three lots of approximately one-third acre or three-eighths acre each, and I considered the lots worth about \$8300.00 each—that is fully improved, and I was to get the property with improvements all in and paid for. The property was never conveyed to me.

Whereupon, the following stipulation was entered into by and between counsel:

That at this time, which was known to Mr. Castle, two trust deeds were on the property, each was on record, and in each the trustee was the Title Insurance and Trust Company, and both were for moneys loaned by the Hogan Finance Company to the Beverlyridge Company. That the trust deeds were ultimately foreclosed and the title to the property was gone out of the Beverlyridge Company into the Hogan Finance Company; that the title passed about April 24, 1926, that the Hogan Finance Company foreclosed their trust deeds and the Beverlyridge Company lost its equity in the lots.

The Referee: Wouldn't the claimant's services, assuming that he agreed to render certain services upon the execution of a certain contract and was to receive certain property as the result of those services, wouldn't his part of the contract then be fulfilled when he procured the execution of a binding contract?

Mr. Andrews: If the court please, in the first place we are going to try to show there never was a binding contract between Mr. Oswald and the Beverlyridge Company.

The Referee: What?

Mr. Andrews: In the first place because, as your

Honor will see, that contract was not signed by all the parties, and Mr. Oswald refused to go on with it and Mr. Blair notified the Beverlyridge Company that they would not go ahead with it until they secured the other signatures, which never was done. Consequently this gentleman was paid by the giving of the deed to these lots, and if the court please, for months thereafter the plat was filed and for months thereafter he failed to pay the release price which, if he had done so, he would get the property in full, but through his own latches and refusal for four or five months to pay the release price after this agreement was in here the property was foreclosed, but he is guilty of latches. They did their part in turning over to him this property. It was for him to pay the release price and then he would have had the property for his own and it would have been released by the Hogan Finance Company. He did nothing but lay still with this document in his possession and finally through his failure to pay the release price, which he agrees to do in this agreement, he lost the property.

The Referee: Your defense is divided then into two parts.

Mr. Andrews: Yes.

The Referee: First, that Mr. Oswald refused to proceed under the contract because it was not signed by all the parties.

Mr. Andrews: Yes, your Honor.

The Referee: And secondly,—

Mr. Andrews: That the contract was never proceeded with at all.

The Referee: Secondly, that at any rate the Beverlyridge Company complied by deeding it to Mr. Castle.

Mr. Andrews: Yes.

The Referee: The property agreed upon.

Mr. Andrews: Yes, your Honor.

The Referee: Which he could have had released and conveyed to him upon the payment of the release price of between fifteen and sixteen hundred dollars.

Mr. Andrews: Yes, your Honor.

The Referee: Any further questions.

Mr. Blair: In answer to the first proposition I will put it this way. The first arrangement was the short letter you have there stating he would give him \$25,000.00 worth of property subject to the release price. Now, what happened after that? He obtained a contract, at least so in their opinion, and they turned around and deeded him the property under the contract, or made an agreement to give him the property after the contract of November 19, which was signed by Oswald. In other words, I think he would be estopped to deny it was not a good contract.

The Referee: The question is not whether he secured a contract, because the Beverlyridge Company recognized it and conveyed the property to him.

Mr. Andrews: They might have under the mistaken idea that Mr. Oswald was going ahead with it.

Mr. Blair: If they have a binding contract they can enforce it. Whether they go through with the contract is another proposition.

Mr. Andrews: That is a question. The letter says: "When this deal is completed." Does it mean when Mr. Oswald goes on with the contract or does it mean just getting the signature of Mr. Oswald? The letter does not say that. It says "When this deal is completed."

The Referee: But they did actually convey the property.

Mr. Andrews: Yes, but in the meantime Mr. Oswald refused—they deeded this while they were still negotiating with Mr. Oswald to go on, but he never did construct all the work on that tract. He stopped work on that contract and therefore, your Honor please, we would have had a right, if nothing was done, to obtain the property back from Mr. Castle. That is the first claim I would make.

We are not estopped—because we deeded him the property and the deal never went through, our understanding was it would go through, so we have the right to rescind, as far as that is concerned.

Then the second proposition is the latches. I don't think it is clear enough in either of these contracts, but the deal was consummated when the work was actually done.

The Referee: The contract of December 14, the agreement to convey, is rather substantial evidence that they were satisfied with his services.

Mr. Andrews: Yes, the testimony will be that at that time Mr. Stone believed Mr. Oswald was going on with it.

The Referee: Any further questions, Mr. Blair?

Mr. Blair: I don't think so.

The Referee: What about the question raised by Mr. Andrews, that the property was conveyed and he could have secured it by payment of the release price?

Mr. Blair: The improvements were not put in, which was not his fault, and the only thing he would take it subject to was the release price, and they lost the prop-

erty through their own failure to pay the trust deeds covering all the property, and I don't believe so far as I am concerned that they ever obtained a map or plat showing the lots to cover it.

The Referee. There is nothing in the agreement I can see about conveying that says anything about improvements.

Mr. Blair: No, it does not say anything about improvements.

The Referee: If he accepted this contract as is, without anything in it about improvements—

Mr. Blair: But the other contract, there was a contract to do the work and deliver the lots accordingly.

Mr. Andrews: Where?

Mr. Blair: The contract of the 19th of November between Oswald and the Beverlyridge Company, which speaks for itself.

Mr. Andrews: But he has nothing to do with that.

Mr. Blair: It would be an element of damages, in other words, if the work was not done.

Mr. Andrews: Why?

Mr. Blair: He was to have the lots there which were to be improved, and the manner in which he was to pay was the release price.

The Referee: But there is nothing in this agreement with him about improving the lots.

Mr. Blair: Not in the agreement between Castle and the trustee. However, the other agreement was between Oswald and the trustee, which was entered into prior to the agreement between Castle and the trustee.

The Referee: But there was no proof though that the bankrupt agreed to convey this property to the claimant

with the improvements in it. As a matter of fact, he accepted it, if I understand it correctly, at a time when the improvements were not there.

Mr. Blair: Yes.

The Referee: And in his conveyance there is not a word said about improvements.

Mr. Blair: That is true, but I think I can show by oral evidence it should be in there.

Mr. Andrews: You certainly can not.

Mr. Blair: It does not change the terms of this written contract in any respect.

(Witness continuing.)

Q. (By Mr. Blair): Let me ask you this Mr. Castle: Was it ever brought to your knowledge in any way whatsoever there was a map or plat of this property recorded in the County Recorder's office?

Mr. Andrews: That is objected to as incompetent, irrelevant and immaterial whether it was ever brought to his knowledge.

The Referee: Sustained.

Mr. Blair: I wish to make an offer at this time to prove that no notice whatsoever was ever brought to this claimant that any map or plat covering this property in this claim was ever filed or recorded in the County Recorder's office of Los Angeles County.

Mr. Andrews: Well, as to any notice being given to him, that is absolutely immaterial.

Mr. Blair: You can make your objection, and I want a ruling.

The Referee: Objection sustained .

Mr. Blair: Exception.

(Witness continuing): I had a conversation with Mr.

Stone with regard to recording an instrument covering this property sometime after I had gotten the letter. I will say about February, 1926. The conversation took place on the street at the entrance of the Wright and Callendar Building. Mr. Stone said that he had been unable to record this plat up to that time and that I would be notified, that I had to give a release on my lots by metes and bounds before they could record the plat. Nothing else was said except that I would not have to pay my release price until their map was recorded. Mr. Stone said that the map had not been recorded up to that time and I could not pay my release price. Mr. Stone and I discussed several times me getting these lots. Mr. Stone explained to me I would have to have these lots—I would have to pay the \$1600 per lot after his map was recorded and that I would be notified before it was recorded. These conversations were in 1926 after he had given me this agreement of December 14, 1925. He never notified me that the map had been recorded. I never signed any map to be recorded. I did not ever give any release to the property that was mentioned in the contract. I never gave anybody authority to sign a map to be recorded.

*Cross Examination*

By Mr. Andrews:

(Witness) I am a real estate man. I had not had anything directly to do with the Beverlyridge before November 5, 1925—I mean by that other than talking to Mr. Stone in regard to an improvement contract. I had nothing to do with the selling of the lots. I had sold lots near the Beverlyridge—I mean in Beverly Hills as

a city. The nearest lot I sold to the Beverlyridge tract was in the Beverly Crest tract, a tract very similar to this, I would say a half a mile or a mile—not to exceed a mile. I sold one lot in the Beverly Crest in about December; that was a year after this. I had not up to the time I took these lots ever sold any lots there for the Beverlyridge Company or in any surrounding territory nearer than two miles and these lots were on the flat. I sold lots in the Beverly Hills Heights tract prior to this contract and after. The Beverly Hills Heights tract is south of Wilshire between Wilshire and Pico, but there is a hill in the tract and the lots are on the fill. I would say the tract is a mile and a half or two miles from the Beverlyridge Tract. I would say I sold about fifteen lots down there. I had sold one hundred lots south of Pico, all of which were on a slope.

I saw Mr. Oswald after I got this letter and I got Mr. Oswald to come to see Mr. Stone. The only paper Mr. Oswald and Mr. Stone signed was the one you know of and that I have identified here. An effort was made by Mr. Oswald to do work under the contract.

Q. Any work done under the contract?

A. Mr. Oswald called for plans and profiles.

Which answer was stricken upon motion.

(Witness continuing.) I think I entered into this contract and was deeded the property early in December, or the latter part of November, 1925. I recorded it on February 9th. I knew the condition of the property when I took this deed.

Q. You knew there were two trust deeds, one for \$350,000, and one for \$250,000 against the property?



Mr. Blair: I object to that as immaterial whether there was a million dollars on there.

Mr. Andrews: This is on the question of latches.

Referee: Objection overrules.

(Witness continuing) I knew of these two trust deeds. I knew they were on record, and I was a real estate man. I did not before I made this contract and accepted this property read over the trust deeds. I was only told they were there. I did not know as a matter of fact. But I knew they were there. I did not see them recorded. I knew that the Beverlyridge Company was not in A-1 financial condition. I loaned Mr. Stone of the Beverlyridge Company \$880.00 to pay their running expenses in November, 1925. I think the money was loaned after the letter of November 5th.

No, I did not at any time tender to the Title Insurance and Trust Company, or any other party, the release price for either of these lots. Mr. Stone told me at the time that I could not pay this release price until he had paid his release price on that particular property and had recorded his map, and when that was done he would notify me. Mr. Stone told me that in February, 1926. I had not made an effort to pay the Title Company or any other Company this money prior to February, 1926. Mr. Stone told me at the time he had given me this letter that I would have to return my contract before he could record his deed on the property, before the Hogan Finance Company could give him a deed to this property. This conversation was in December. All of these conversations took place in December, January and February. I couldn't say whether or not this conversation took place in the first or latter part, but it was during December.

There was something said about the contract I signed.

Handing the witness Claimant's Exhibit 2, being the letter of November 5th, 1925, witness continued:

That was written to me by Mr. Stone after we had certain negotiations and in the letter Mr. Stone said he would deed me \$25,000 worth of property in Beverly Ridge. I was to pay the release price on the lots taken, running between fifteen and sixteen hundred. This letter was accepted by me and I agreed to those terms. Thereafter, the contract, Exhibit 1, was signed by Mr. Stone and me. That was the consummation of the letter, and I understood it to carry out the terms of the letter. Before the signing by Mr. Stone and me of the contract and deeding that property to me there was a contract drawn up between Mr. Oswald on the one hand and Mr. Stone and a number of people to sign which has been offered in evidence. I took part at that time in the negotiations for that contract, not in signing them. The terms were discussed before me. At the time the proposed contract was drawn copies were submitted to me and to Mr. Oswald and Mr. Stone in Mr. Westervelt's office and we all read them over. I was in a casual way familiar with the terms of the Oswald contract. I don't know whether I read the entire contract. I don't remember whether a contract was handed to me to read but I was familiar—I knew there was a contract there, however, I couldn't say I read the contract. I was there when the terms were discussed. I was present when the contract was signed. It was signed by Stone, Oswald and Mr. Westervelt. The contract was read over before it was signed by Oswald and Westervelt and Stone. I don't know that I read a copy too.

The witness being handed the contract and directing his attention to paragraph 5 on page 3 of the contract: "Said first parties (that is the Beverlyridge Company) represent that they are the owners of said property and that the only encumbrances and claims against said property are as follows:" stated:

That is the property in which these lots were deeded to me. I knew that it mentioned a trust deed in the sum of \$220,000 and secondly a trust deed in the sum of \$320,000, and that the third one is a mechanic's lien and attachments not over \$30,000, and I knew that approximately 73 lots or 17 acres of said property which had been sold for the sum of approximately \$612,690.

Then also the next paragraph: "Said parties of the first part (Beverlyridge Company) further represent that they own all of said described land, except as notes in subdivision D of this article, and that each of the trust deeds described in subdivisions A and B contain a release price which together permits them to obtain clear title to any portion or part of said property, by the payment of a sum equal to \$6,190 per acre." The witness stated:

I knew that and I knew that my lots were part of those lots. I also knew that this deed which was given to me by Stone contained a description of my property by metes and bounds. I knew from Mr. Stone's letter that by a payment of between fifteen and sixteen hundred dollars as set forth in the letter would clear any of that property. I did not know to whom it was to be paid. I knew there was a trust somewhere but I didn't know where. I did not make any effort to find

out because I was going to be notified when they recorded this and I was ready to pay my money at any time. I had arrangements made to pay my money any time. I told you this morning the first time I was told by Mr. Stone about being notified was sometime in January or February. I said I would be notified by Stone. I did not testify this morning that I had no conversation about this notice business. I told you, in December, January or February was the first conversation I had about the notice. I did understand there was a release price when I took the lots. I did know this was all under a trust deed; that is why I could not pay my release price, because it was not recorded and that is the reason I did not pay the release at that time. I could not until Mr. Stone had recorded their map. The subdivision plot of the second unit was not recorded. At the time that he gave me this contract Mr. Stone said that he had a different agreement with the sellers of the property; that I could not pay the release price on these lots that I had obtained by metes and bounds until a map was filed. After the foreclosure by the Hogan Finance Company of the trust deeds I did go to them and try to make arrangements with them for the purchase of the property. I tried several times to make a deal with Mr. Beyers on the lots. Mr. Beyers offered me several propositions on lots and several times I was talking with Mr. Greenberg and I imagine—I am sure I did tell him I would pay the release price on these lots if I could get them, but at all times I had a deal and I did have for five or six months after that on the lots, but we never could seem to get to terms.

On some of Mr. Beyers' lots, some of the Beverly Ridge estate lots. I understand they foreclosed in April. It seems there are some lots Mr. Beyers holds in the bankruptcy, lots that are clear of any encumbrance. Mr. Beyers and I went up to see the property and he offered me certain lots there subject to certain encumbrances to wipe my claim out, but I didn't want to accept the deal the way he could sell the lots to me, so we never did do anything. This happened after bankruptcy. Before bankruptcy I gave Mr. Stone \$3500.00 to release the Oswald claim against the Hogan Finance Company. I can't remember dates, but I think it was in June prior to bankruptcy when I gave him the \$3500, as at that time we thought we were going to buy this property. A bunch were going to take it over. I don't recall that in February 1926 I came to Mr. Beyer and asked him about the contract and my deeds and Mr. Beyer told me to put them all on record and pay the release price and I said I would, because I understood it distinctly that they had to record that map. I do not recall Mr. Beyer having given me the advice. He might have, but I don't recall that in February, 1926, long before bankruptcy, and before I put my deed on record, that I went to the Beverly Ridge offices and there saw Mr. Beyer and showed him *by* deed and asked him what he would suggest doing and he told me to protect myself and pay the release price and put my deed on record, and I said I would and put it on record. I did put my deed on record in February, 1926. I think the Hogan people started their suit to quiet title to all these lots. I never saw their deed. I was joined as a defendant in that suit. I think I was served.

I never gave them a quit claim deed to these lots. I don't think I contested their suit and I never gave any quit-claim deed. I do not know about the contents of the complaint. I think I was served personally with a copy of the complaint.

CHARLES STONE, being called on behalf of claimants, under Section 2055 *C. C. P.*, testified as follows:

No maps were duly recorded covering the property which I had contracted to convey to Mr. Castle. I do not remember the date that the notice of default was served upon me by the Hogan Finance Company under the trust deed. The property was actually sold out under the trust deed. I presume, but I do not remember the details of it, that they served notice of default and demanded payment.

By Mr. Beyer: The sale was held on April 24, 1926.

By Mr. Beyer: The notice of default was filed approximately four months before that time.

Mr. Beyer (continuing): The notice of default of the Hogan Finance Company was November 4, 1925, and at that date they were in default.

It was here stipulated by counsel that they were in default on November 4, 1925, and the default bears that date; and that the bankrupt never did after that time redeem or relieve themselves of that default.

*Cross Examination of Charles Stone.*

By Mr. Andrews:

I did have a conversation with Mr. Castle as to whether I waived default on this before I signed the deeds with him. I told him the exact condition of the company, I told Mr. Castle and I told Mr. Oswald. By

“exact condition of the company” I meant that we would not be able to go on with the property until we get a contract to prove the property and to carry out the improvements. He knew the details of the whole thing and about whether there was a default on the trust deed. He loaned the Beverlyridge Company \$880 in different sums. He knew about the situation of the company or I would not have had to borrow the money if I did not need it. I never repaid him any of it. These loans began in November, 1925, and ran along I think until sometime in January or February, as I remember it. The map of the second unit was not filed. The engineering work was done on it and the profiles were out and the metes and bounds were all calculated and the lots and tract was all laid out and we sent it to the city for recordation but we did not have the money to pay for it. This was known to Mr. Castle. We even got a tract number on it. The city of Los Angeles gave us a tract number on it but that was as far as we got.

Witness, being handed contract, Exhibit 1, stated:

These tracts are described by metes and bounds. We could only describe it by metes and bounds because the map was not recorded. Mr. Castle understood it. I told him that. I submitted to him the description by metes and bounds. We had the engineers stake it out and calculate in order to get the metes and bounds. Mr. Castle knew that because he had to wait several days for that. He agreed to take the property as it is there described. Mr. Castle knew that the escrow was up to the Citizens Trust and Savings Bank. He saw the instructions and he was there a good deal at that time. I think I told him where the release price would be paid.

The time the Oswald contract was signed it was in Mr. Blair's office, along in the evening between six and seven o'clock, and Mr. Castle, Mr. Oswald, Mr. Blair and Mr. Westervelt and myself were there. Everybody saw the trust deeds before they were signed, including Mr. Castle. There was several copies and I think Mr. Castle read one. I could not say that it was read aloud. I did not tell Mr. Castle not to pay his release price because we were going to file the map and wait for us to file the map before he paid the release price. I am positive of that. I did not tell Mr. Castle not to put his deed on record. I did not tell Mr. Castle not to pay the release price and get possession. I did not tell him that I had been unable to file the plat up to that time and that I would notify him when I did. I did not tell him at any time that I would notify him when I filed the plat so he could pay the release price.

*Re-Direct Examination of Mr. Stone.*

By Mr. Blair:

I knew that I would have to have Mr. Castle's signature to the map before I could record it, or else a quitclaim deed from him to the property I had agreed to convey to him, but I did not have any conversation with him where I told him I would take it up with him and get another deed in exchange for the quitclaim deed. I knew somebody would have to get in touch with him before I could record it. I thought that was a fact. We had an arrangement in the declaration of trust whereby a portion of the property could be sold before the map was recorded. Any portion of Unit No. 2, without any



streets being dedicated or anything. My agreement with the Hogan Mortgage and Finance Company was so much per acre, which, after we recorded it would be worked out on a lot basis. It was to be after we recorded it. I did not know prior to the time I recorded the map what the lot basis upon the release price would be. There was an easement there for streets before the map was recorded. We knew how much area was cut up into lots and how much area was going to be cut up into streets before the map was recorded. We knew before because we had already recorded the map on the first unit and had excavated for the streets, and I knew that the City Planning Commission would not allow us to widen those streets, and they would have to be uniform in there. I knew approximately the length of the streets. I could not tell what they were offhand but we had a profile on the entire property made by Mr. Ballinger, and that had all been worked out. That did not show the exact area of the streets to be taken out of the second tract to be subdivided. We did not know the exact area and how many square feet because we had not at that time determined the extent of the second unit. The exact release price per lot could have been done on an acreage basis. We had an agreement in the original agreement with the Hogans on the release price of the property, that it was first worked out per acre, and then it was to be worked out afterwards, after the map was filed on the unit for so much per lot, on the basis of so much per acre, so it would have taken in the streets. It was figured on the whole. There is always a possibility that the county might require us to relocate the streets. As a result, if

we were required to relocate the change would not be on the width of the streets but the contour might be greater. You don't get this, Mr. Blair, if you did you would see it in a minute. In that agreement with Hogan that matter was worked out in an acreage basis regardless of streets. They did not consider streets. They wanted so much per acre and it did not make any difference as to the streets. There was one hundred and eleven and a fraction acres of land there and that was worked out at so much per acre and the streets would have nothing to do with it, would not apply at all. They were not going to let us off because we put it into streets, so it would not make any difference. The release price I made him on the lots was big enough to cover all those contingencies. I do not remember the exact release price to the Hogan Finance. It was in the neighborhood of \$6000 I think. The release price per lot to Castle was sixteen hundred and some odd—sixteen hundred dollars as I remember. I would say I conveyed to Mr. Castle in the neighborhood of four lots. That is the way we cut that up on the first unit. The release price on the lots would not vary according to the amount in area we took out of the tract for street purposes, because if I took it out of the streets I would have to put it in the lots.

*Re-Cross Examination of Mr. Stone.*

By Mr. Andrews:

The excavations for the streets in the second unit had that time in December been already made and Mr. Castle was shown the property and he agreed on the property. It would have been possible for Mr. Castle to pay the release price and get a deed to those lots at the time I

gave him the contract on the metes and bounds description. I could not give him a deed because he had not paid the money. I did not have the money to pay it with, and in that agreement he was to pay it. It was in trust in the Citizens Trust & Savings Bank and they issued all of them. I think I am correct in stating that there was an extension to the trust deed referred to in the contract with Oswald, paragraph seven. I think we got an extension but I am not sure. I did not receive any notice from Mr. Oswald with regard to any election on his part to cancel the contract, or consider it void. He did not do any work under the contract. We received a letter asking that the wives of the partnership join in this contract. That is the only thing I remember of, with reference to any documents as to why he did not do any work. I went out with Mr. Castle a couple of times and went out there with Mr. Westervelt two or three times, and went out there once or twice myself (to Oswald's) and asked him to proceed with it and he did not. I had a conversation with him in the presence of Mr. Castle. In those conversations Mr. Oswald said he was prepared to proceed, but never did. It is my impression that we got a six months extension of the trust deed and I delivered to Mr. Blair a letter dated November 19, 1925, in which the Hogan Finance Company agreed to an extension of time for the payment of that first trust deed to January 19, 1926.

Mr. Beyer (volunteering) That was extended and the trust deed never foreclosed, the first trust deed on it. That is the one referred to in the contract. It was never foreclosed.

(Witness continuing) We never delivered to Oswald the maps and profiles approved by the City of Los Angeles to do the work. Referring to the agreement between the Beverly Ridge and the Hogan Finance Company, of which the Citizens was the trustee, witness continued: If my memory serves me correctly, the release clause is not in that contract—I think it is with the Citizens Trust.

RICHARD CASTLE, being recalled for further direct examination, testified as follows:

I did have a conversation with Mr. Stone with reference to delivering me a deed on that property. During the month of November Mr. Stone told me the lots I had selected could not be delivered to me at that time, that there was a release price to be paid on the entire acreage on the second unit and when that was paid he could deliver me a deed to those lots and I would then pay the release price, and that is why I never did offer the release price. I was told by Mr. Stone and Mr. Westervelt during the month of November, or about the time that this contract was written that I could not get the lots at that time.

*Cross Examination.*

By Mr. Andrews:

I was told in November that at that time if I paid the release price I could not get a deed. I was told I could not before this contract was written or this agreement that Mr. Stone gave me. I yet signed an agreement to take these lots and I accepted this proposition to take them after that or later. He could not give them but he was going to pay the release price and record the second

unit; as our contract covered the entire tract and not the second unit, and when it was paved, or when it was recorded rather, then I would get my lots. That is why I did not pay the release price at that time.

CHARLES STONE, being called for further direct examination, testified as follows:

I never had such a conversation with Mr. Castle that sometime in November I told him that the lots he had picked out in the second tract he could not pay the release price on. I never had any such conversation as he stated.

*Cross Examination.*

By Mr. Andrews:

I was never in a position to give him a deed if he paid the money, but the Citizens Trust & Savings Bank could. I would say that it was less than an acre. I read the declaration of trust many times.

JOHN D. BEYER, called as a witness on behalf of the trustee, being first duly sworn, testified as follows:

In February, 1926, I was employed by the Beverly Ridge Company. I was in the office at the time in an advisory capacity. In the month of February, 1926, Mr. Castle came to the office in the early part of February and discussed with me the matter of the possible refinancing of the Beverly Ridge and what he had better do with his contract, with his commission, as he called it. Mr. Castle asked me what to do about his particular lot and I told him the best advice I could give him was to record it and make it of record and then go down and see Winchell about it. Mr. Winchell is a trust officer of the Citizens Trust & Savings Bank. He had the trust

on the Beverly Ridge. Castle and I discussed Mr. Winchell several times. We discussed the Beverly Ridge affairs and Mr. Winchell's connection with them. I didn't know particularly who Winchell was or didn't describe him particularly, except I knew he was the Trust Officer of the Citizens Trust & Savings Bank who had the trust on the Beverly Ridge. Mr. Castle didn't say anything to me about knowing from whom he could get the deeds to his property. I did not discuss the matter of the release price with Mr. Castle, except I remember that once, early in February, we did discuss the release price. He asked me if I thought the release price was a reasonable one and I told him that was about what the company had to pay the bank, that there was no way of getting under that amount. I remember I told him I did not know the exact amount of lots coming to him but we discussed the lots, three or four lots, and came to figure it up and it was about sixty-three or sixty-four hundred dollars to pay the bank, and I told him that was the least he could get out of it for. I knew the condition of the property in November, 1925. Some of the excavations, most of them, had been made on the property for the second unit and part of them on the third unit. I do not know whether or not, after these excavations were made Mr. Castle picked out the property he wanted. I don't know whether Mr. Castle went over on that property and saw the property he wanted. I don't know what he did before the several trips with myself—he has been up with me but I don't know of any previous trips. He was up with me after the bankruptcy.

The following letters were received and admitted in evidence as Trustee's Exhibit A:

“December 21, 1925.

Mr. Charles Stone,  
Beverly Ridge Co.,  
Wright & Callender Bldg.  
Los Angeles, Californis.

In re. Oswald Improvement Contract.

Dear Mr. Stone:

Mr. George Oswald has requested that I communicate with you in regard to the following matters:

If you have secured the signatures of the parties of the first part to your contract with George H. Oswald, will you kindly forward the same to me.

Will you also kindly forward the plans and profiles, and obtain the permits necessary to do the work and forward copies of the same to me, so that I can immediately take the matter up with Mr. Oswald.

Yours very truly,  
GEO. D. BLAIR.”

“January  
fifth  
1926.

Mr. George De Lany Blair,  
711-17 Security Building,  
Los Angeles, California.

Dear Sir:—

Your letter of Dec. 31st with reference to the Oswald improvement contract, received.

We have obtained the signatures of all of the parties to the contract with the exception of one, which will necessitate a trip to Santa Monica on the part of the writer and this will be done at the first possible moment.

The contract which we are to deliver to you will supplant the original contract which was signed by the writer under a trust agreement and power of attorney for all the partners of the Beverly Ridge Company.

Plans and profiles are in work and in the city's hands. Permits will be issued in the next day or so, so that Oswald Bros. can proceed immediately

with the improvement work. Copies of these plans are now in the hands of our engineer and I am directing him today to deliver these plans as far as they are completed to Mr. Oswald.

Sufficient grade stakes are set on the dirt excavations so that shovels can begin work immediately. These have been in place for some time in accordance with my telephone message to you in November, so that this part of the work has been ready for some time. Excavation work should have started some weeks ago. We have an arrangement made wherein the plans for the work will be kept ahead of the improvement work.

Trusting that this gives you the information desired and with kind regards, I remain

Yours very truly,

BEVERLYRIDGE COMPANY,

Charles Stone

Managing Director."

CS:F

"January 23, 1926.

Beverly Ridge Co.  
202 Wright & Callendar Bldg.  
Los Angeles, California  
Attention, Mr. Stone:

In re. Oswald Improvement Contract.

Dear Mr. Stone:

On December 21st I wrote you and inquired if you had secured the signature of the parties of the first part to your contract with George H. Oswald. A few days later, I saw you at Mr. Castle's and you stated that you expected to have all the signatures within a day or two. As yet, I have not received the contract.

Mr. Oswald has informed me that the plans and profiles and necessary permits to do the work have not been forwarded to him.

I would like to call your attention to the fact that Mr. Oswald is contemplating the undertaking of other large contracts in the near future, and as a result would like to know if the above matters have been taken care of, and if not when they will be.



Mr. Oswald feels that if this matter is not taken care of within the next few days, He will have to refuse to accept the contract.

Yours very truly,

GDB MER

GEO. D. BLAIR"

*Direct Examination*

GEORGE H. OSWALD, called as a witness on behalf of the claimants, being first duly sworn, testified as follows: By Mr. Blair:

(Witness) I am the George H. Oswald mentioned in that contract which has been introduced in evidence, dated November 19th. I have examined that contract and my signature is attached to it. I was ready, able and willing at all times to go on and complete the work as set forth in the contract under the terms and conditions of the contract. At the time the transaction took place with regard to the signatures on the contract, the night the contract was signed, there was Mr. Blair, Mr. Stone, Mr. Westervelt, Mr. Castle and myself present, and we signed that contract and Mr. Stone said he had authority to sign these other names—he said he was a partner and that he had authority to sign their names, he had the power of attorney to sign their names and that what he did was all right, and then Mr. Blair asked him to get the other names if he could, and he said yes, he could get those but we would go ahead with the deal as it was signed. We did not go ahead with the deal because of the fact that he did not produce the plans and specifications and permits. I asked him not once but dozens of times to get the permits. I sent Mr. Castle out there several times to get the permits. I have been in the paving business a number of years.

It was here stipulated that Mr. Oswald had the financial ability to comply with the contract if he wanted to.

(Witness continuing) I do several million dollars of work each year and have been in the business fifteen years. The reason I did not go ahead with the work was on account we did not have the plans and specifications to go ahead. The city demanded those. We did not know if we did not have the plans whether they made an inch cut or four feet. We did not know what to do. The permits were never delivered to me.

*Cross Examination*

By Mr. Andrews:

Q. Now, were the grade stakes on the property,

A. I don't know. No, sir.

Q. Are you sure of that,

A. Yes. Now, just a minute here. There is three sections that the contract called for us to do. Or we will say three units. They had some stakes in the first unit but they did not have no grade sheet for them and no plans for them. We agreed in this contract that we would agree to begin work within ten days. Just by hearsay I knew the financial condition of the Beverly Ridge Company at the time I signed the contract. I had loaned them \$300 to pay telephone bills just before this. They said the telephone service was cut off and I loaned them \$300. I did not go into details with them. I could not do anything for them. I didn't know where the stakes were. He told me lots of things. I don't know whether or not he said he could not get the permits because he did not have the money for it. The only thing

he told me in regard to the money matters, as far as that was concerned, was that the telephone was cut off because he could not pay the bill. In general conversation they all said that it was necessary for some work to get started before he could sell any lots. Mr. Blair was my attorney during all of that time. I presume Mr. Blair wrote Mr. Stone under my instructions. I do not know whether I saw this letter (23rd of January, 1926) before it was sent. I don't know whether I had a conversation with Mr. Blair before it was sent. I told Mr. Blair to take care of my affairs and he generally does.

On being read a portion of the letter of January 23, 1926, the witness continued:

I told Mr. Blair to see if he could not get the matter straightened out and go ahead with it. I would not say that I refused to accept the contract unless the signatures were obtained. I presume that Mr. Blair was representing me when he wrote that letter (of January 23rd, 1926).

Q. As a matter of fact you never did at any time after that receive the contract signed with the other names, did you?

A. There never was supposed to be another contract. I said Mr. Blair asked if he could not get the others in and he said yes he could do that if he wanted to do that. There was around five or six hundred thousand dollars involved in all this work.

Q. Would you have gone ahead with this without the signatures on the contract?

A. When I signed the contract it was all right and I would have gone ahead with it if we had got the stakes. I did not read the letter that followed that last letter of

Mr. Blair, the letter written by Mr. Stone. To my recollection I never saw it. I was never advised by Mr. Blair that Mr. Stone said he would try to have a new contract drawn up which would satisfy me. I never heard what was stated in that letter. I was present when this contract was signed and heard the conversation between Mr. Stone and the rest of us and Mr. Stone said he had authority and the power of attorney to sign these names, but as far as the contract was necessary, I did not have to have the other names, but Mr. Blair said then it would not hurt to get them. That is all the conversation, and Mr. Blair asked if it was all right with me and I said "fine and dandy" and I signed the contract. I read the contract before I signed it and I saw the provisions that they owed two big trust deeds. I knew they were in default on those trust deeds. I did not know that they had no funds whatsoever. I knew at that time that they did not have enough funds to pay their telephone bill. That was sometime later than when the contract was signed. I don't remember Mr. Stone telling me that they were not selling any lots at that time, that sales were stopped I did not know of them having any finances whatsoever. I did not know of Mr. Castle lending money to Mr. Stone for the company. We went into the matter of the company's financial standing before we signed the contract, Mr. Blair and myself. If I could explain, these affairs are all alike, very seldom own the land; they are all drawn up about the same as this, pretty nearly all of them, and that is one of the reasons we take a little more chance and we add a little more money to it than to a cash proposition. Every other detail is like this, they never owned the land, and take a chance of

selling it out. At this time there was a boom going on in this district and ninety-nine out of one hundred times this deal would go through to one it would not. I have other similar contracts going on right now under the same conditions as this one. We look into the cost of the land and where the property is situate and so on.

Mr. Blair and I looked into the financial condition before we signed the contract. I don't remember offhand what we found.

Q. Then if they were penniless, practically bankrupt, owing two trust deeds in default, amounting to over ~~\$600.00~~ \$600.00, you say you knew that and expected to go ahead?

A. Well, I signed the contract—I was a darn fool or something or I would not have signed the contract. There was my signature to go through with it, and whether it was a bad deal or a good deal I don't know. I did not instruct Mr. Blair I would not go through with it unless they signed with certain signatures. Mr. Blair was my attorney and still is.

GEORGE DE LANY BLAIR, called as a witness on behalf of the claimants, being first duly sworn, testified as follows:

My name is George D. Blair. On or about the 19th day of November I called at the office of Charlee Stone in the Wright & Callendar Building with reference to a proposed contract between George H. Oswald and Mr. Stone. I think I made at least two or three visits to his office. Mr. Stone informed me that they had, I think it was on one Saturday just approximately the time this contract was signed, sold some forty odd thousand dollars worth of property there and that if he could get this

contract signed by Mr. Oswald he would then be in position to immediately go ahead and make a complete success of the property. This was in the presence of Mr. Stone and myself. I made investigations about that time as to how the title of the property stood through Mr. Stone and through the bank. I believe it was the Citizens Trust, and as I recall I examined the papers to see the title. I believe I found title stood in the names of all these parties to the agreement—no, I believe it stood in the name of Charles Stone—that is so long ago I don't remember. I believe it was brought to my attention the matter was in the hands of Charles Stone, as trustee.

At the time, on the 19th of November, the time when this contract was signed in 1925, Mr. Stone, Mr. Westervelt, Mr. Oswald and Mr. Castle came to my office. At that time when the contract was signed I asked Mr. Stone what authority he had to sign this contract for the other people. Mr. Stone said to me, "I am the trustee. It is a partnership and I have the power or attorney to sign all the signatures of all the individuals." I said to Mr. Stone, "I assume that the contract will bind all of the parties, but will also bind Mr. Oswald. I would like to have the signatures, however, of all the wives thereto so there would not be any question because your power of attorney might have been revoked by some and filed of record, which I could not tell without checking the record." He said, "All right, I will endeavor to get it." However, I want a contract signed now so I can put it in the paper and advertise it that Oswald has entered into the contract to do the work," so I said "All right," and I told Mr. Oswald at the time, "This is a dangerous contract," and if you take this contract you will have to

keep yourself in a position to purchase this land or assume the liabilities and responsibilities in the event the Beverly Ridge people fall down, that is, if you want to protect yourself after you have worked on the job.” Mr. Oswald said he understood that and the contract was signed by Mr. Oswald and also signed by Mr. Stone at that time. This was in the presence of all the parties. On several occasions after the signing of the contract I asked Mr. Stone, I think at least two occasions by telephone, in each of which I recognized his voice on the other end of the wire, about obtaining the permit to do the work and plans and profiles, and he said he would get them.

*Cross Examination.*

By Mr. Andrews:

In the transactions between Mr. Castle and the Beverly Ridge people Mr. Castle conducted his own affairs. He might have suggested things to me but never consulted me as attorney and I did not take up these things with him until after the contract was signed. I went into the financial condition of the Beverly Ridge Company before this contract was signed with Mr. Oswald in a general way and as near as I could, but I had to take the word of Mr. Stone on practically everything. I ascertained there was a trust deed in which the Citizens Trust & Savings Bank was trustee and that they were holding the property subject to two trust deeds of the Hogan Finance people involving about \$600,000. I was told by Mr. Stone, as I recall it, and I think I tried to verify it at the bank, that this encumbrance was against the property. There was

one trust deed, as I recall it, about due and we felt there should be an extension of time in order to enable the Beverly Ridge people to go and sell some lots and get some money in. I think I inserted in clause five the money and interest due, but I do not believe they were in default at that time. If they were in default and I did know it I asked for an extension of time so they would be protected. I think they told me it was a partnership and Valentino was in it and they were going to get money from him. I did not look very much to that, but the real property itself, figured it out if the Beverly Ridge failed here Mr. Oswald may have to come in here and put up a million dollars and venture maybe in the real estate business, but he could work it out. I did not know in order to protect Mr. Oswald I had to have the wives sign. Mr. Stone told me he had authority to bind the Beverly Ridge. I wanted to get everything I could naturally. Mr. Stone told me he had authority to bind everybody and I took his word for it. I wrote him a letter.

Witness being shown a letter of December 31, 1928, (Trustee's Exhibit A) continued:

Yes, I wrote it.

CHARLES STONE, recalled for further examination, under Section 2055, testified as follows:

I am the person who signed this agreement as trustee—trustee for the Beverly Ridge copartnership. I became such trustee by a trust filed at the Title Insurance and Trust Company. The copartners of the Beverly Ridge signed it. None of the wives signed it; just the *copartnersh* signed it. The property had all been purchased and the trust was formed afterwards. I was



made trustee afterwards for all the parties buying the property, and I had authority to buy and sell this property.

The Referee: I don't see how there is any escape from the conclusion that if these other parties were necessary parties—

Mr. Blair: Well, have they contended they are necessary parties?

The Referee: Assuming they were necessary parties, they must have either signed themselves or by a person authorized to represent them, before there is a valid and binding contract, and if there is no valid and binding contract the fact it was signed by Mr. Oswald does not validate it.

The Referee: Well, I don't know, but you see these other parties, the wives, it is a question whether it is community property and the effect of the law of the State of California on the question of the wife of the husband to sign—

(Witness continuing) To the best of my knowledge, Mr. Arbuckle, Mr. Pratt, Mr. Stone, Mr. Westervelt and Mr. Purpus were married men. Mr. Norcross was a single man, and the ladies named in the agreement were the names of the wives of these different people. They were married at the time they acquired whatever interest they had in this property. My mind is not clear, but I don't think I obtained the signatures of the parties of that contract or assignment to it after the 19th day of November. I got all the names of the men with the exception of John M. Pratt. Evidently, there was no women signed. I was trustee for the Beverlyridge Company copartnership, and it consisted of John M. Pratt,

Frank Arbuckle, Purpus, Norcross, Westervelt and myself. I signed for them as trustee.

The Referee: As far as the Castle claim is concerned, as far as the \$880 amount is concerned, that may be allowed.

It was stipulated that the value of the property conveyed to Mr. Castle was \$25,000 less \$880/43,560ths of \$6190, leaving a balance of \$20,474 due Mr. Castle if his claim is allowed plus \$880 previously allowed.

\$880 if the claim is allowed.

Whereupon the Castle claim stood submitted, upon the filing of a brief memorandum of authorities and the documents.

The Oswald claim was continued to December 10th for the filing of the documents upon the legal question as to whether the contract was binding between Oswald and the Beverlyridge people or not, and if the contract is binding then evidence would be introduced as to the damages.

Upon being interrogated by the Referee, the witness STONE continued:

My interest in the property was acquired after my marriage by my earnings and not as income or issue of any profits that I owned before I was married, and not as a result of any gift, bequest or devise that came to me after my marriage. I could not say as to whether that was true as to all the other copartners.

Trustee's exhibit B is in words and figures as follows:

"AGREEMENT.

MEMORANDUM OF AGREEMENT, made and entered into

this 28th day of February, 1925, by and between, Charles Stone, Party of the first part, F. A. Arbuckle, John M. Pratt, R. W. Purpus, W. I. Norcross and James Westervelt, parties of the second part, all of the city of Los Angeles, County of Los Angeles, State of California.

WHEREAS, party of the first part has caused title to be taken, or is about to cause title to be taken in the name of Beverlyridge Company for the benefit of the parties hereto, to the following real property, to-wit:

The  $W\frac{1}{2}$  of the  $NE\frac{1}{4}$  and the  $NW\frac{1}{4}$  of the  $SE\frac{1}{4}$  of Section 11, Township 1 South, Range 13 West, SBBM

in said County of Los Angeles, State of California, excepting two certain parcels more particularly described and set forth in deed of conveyance from Beverlyridge Foothills Syndicate to said Beverlyridge Company, dated January 28, 1925, and placed by the grantor therein named in Escrow No. 16939 in the main office of the Citizens Trust & Savings Bank, Los Angeles; and

WHEREAS, parties of the second part are, with party of the first part, all of the beneficiaries for whom title to said premises is taken; and

WHEREAS, it is proposed and intended by all of the parties hereto that party of the first part shall immediately cause to be executed and delivered into said escrow for recordation under the terms of said escrow, a first trust deed for Two Hundred and Fifty Thousand (\$250,000) Dollars, and a second trust deed for Three Hundred and Fifty Thousand (\$350,000) Dollars covering said premises, and that said premises shall thereafter be subdivided and sold under a subdivision trust of which said Citizens Trust and Savings Bank shall be the trustee,

and which shall provide after all necessary expenses and liens, including the amounts of said first and second trust deeds with interest thereon, have been paid, that the net profits shall be divided among the parties hereto in accordance herewith:

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements herein contained, the parties hereto mutually promise, covenant and agree to and with each other as follows:

### I.

Party of the first part shall, and hereby declared that the said premises and or the net avails and proceeds shall be, under the terms of said subdivision trust, held and administered in trust for himself and the other parties hereto, and that he will cause or procure as speedily as may be, a proper subdivision trust thereof, to be executed by the said Citizens Trust and Savings Bank or some other suitable corporate trustee in which it shall be definitely provided that said corporate trustee shall divide the net proceeds or profits thereof to and among the parties hereto in accordance with the true intent, meaning and purport of this agreement.

### II.

Parties of the second part hereby consent to the taking of said title as above recited, and do hereby each for himself constitute and appoint the said party of the first part his agent and trustee in the premises, and each of the parties of the second part hereby agrees for himself that he will sign, execute and deliver promptly upon request of the party of the first part, all necessary consents,

deeds or other documents requisite to be signed by him as the beneficiary of said trust for the purpose of effectuating or validating either of said trust deeds or other instruments that may be or become necessary or requisite in order to carry out the true intent and purpose hereof.

It is mutually understood and agreed that the proportionate interests of the several parties hereto in and to the said premises and the net avails or profits thereof are as follows:

Name	Amount
Charles Stone	62½%
F. A. Arbuckle	12½%
John M. Pratt	10
R. W. Purpus	10
James Westervelt	3
W. I. Norcross	2

and party of the first part hereby expressly covenants, agrees and declares that he does and will hold or cause to be held the said title as trustee for himself and the other parties hereto, and will pay or cause to be paid to each of the parties of the second part his several percentage of the said net profits in accordance with the percentages set opposite the names of the several parties hereto.

#### IV.

The parties of the second part do hereby each for himself make, constitute and appoint the said Charles Stone, his attorney-in-fact and the director on behalf of all parties hereto, of the enterprise hereinabove described, and empower him to make and enter into all necessary

contracts on behalf of the parties hereto to carry out said enterprise for the benefit of the said parties hereto.

## V.

It is mutually understood and agreed that said enterprise shall be carried on by the parties as partners having their several interests therein in the proportions hereinabove specified, and that the name "Beverlyridge" be adopted as the firm or trade name thereof, and a certificate representing said name be filed in the office of the county clerk and published as required by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CHARLES STONE

*Party of the first part.*

F. A. ARBUCKLE

J. M. PRATT

R. M. PURPUS

JAMES WESTERVELT

W. I. NORCROSS

*Parties of the second part.*

STATE OF CALIFORNIA

County of Los Angeles—ss.

Be it remembered that on this 21st day of February, 1925, before me C. A. Sprecher, a notary public in and for the state of California, County of Los Angeles, appeared Charles Stone, F. A. Arbuckle, John M. Pratt, R. W. Purpus, W. I. Norcross and James Westervelt, to me personally known, and known to *be* to be the parties named in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto affixed my seal the day and year first above written.

C. A. SPRECHER

*Notary Public in and for the County of  
Los Angeles, State of California.*

(SEAL)

My commission expires Sept. 2, 1928.

Exhibit.....is in words and figures as follows:

“DEED OF TRUST.

THIS DEED OF TRUST, made this 18th day of April, 1925, between Charles Stone and Clara F. Stone, his wife, of Los Angeles, California, hereincalled Trustor, the said Charles Stone, herein called Trustee, as trustee of Beverly Ridge Company, a copartnership consisting of F. A. Arbuckle, John M. Pratt, R. W. Purpus, I. W. Norcross, James Westervelt and Charles Stone, which is herein referred to as beneficiary.

WITNESSETH: That Trustor hereby grants to Trustee in trust with power of sale, all that property in the city of Los Angeles, County of Los Angeles, State of California, described as follows:

Tract No. 8080, in the city of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 112 pages 9 et seq of Maps, in the office of the County Recorder of said county:

ALSO the North West Quarter of the North East quarter of Section 11, Township 1 south, Range 15 West, S.B.M in the city of Los Angeles, County of Los Angeles, State of California.

ALSO those portions of the South West quarter

of the North East quarter and of the North West quarter of the South East quarter of said Section 11, which lie North of the North line of Tract No. 8080, as per map recorded in Book 112 pages 9 et seq of Maps, in the office of the County Recorder of said County.

To have and to hold said property, subject to encumbrances now of record thereon, upon the following express trusts, to-wit:

1. To hold, sell and convey same or any part thereof and to hold or reinvest or apply or dispose of the proceeds of such sales in accordance herewith.

2. The Trustee shall have power in his own uncontrolled discretion and without the consent or any act of beneficiary, to sell, and convey any part or portion or all of the above described premises; to dedicate streets and roads; to contract for and cause to be installed pavements, sidewalks, curbs, conduits, grading or regrading upon the said premises or any part thereof, and for said purposes of any of them to charge the said premises or any part thereof or to mortgage same or any part thereof, or to execute and deliver deed or deeds of trust conveying same or any part thereof.

3. From time to time to pay to the beneficiary such portion of the proceeds of sales of the said premises or any part thereof, as may in his discretion be advisable, convenient or *sale* to withdraw from the corpus of the trust hereby created.

4. To hold the net proceeds of the sale of said premises, or any part thereof in trust for the benefit of and as trustee for the beneficiary above named;

IT BEING EXPRESSLY UNDERSTOOD AND AGREED that



the title to said real property is vested in said trustee absolutely, and that said trustee has and shall have during the life of this trust, full power and authority to sell, mortgage, or convey the same or any part thereof, and that the beneficiary has and shall have no title legal or equitable in the said real property or any part thereof, but only an equitable title as beneficiary in the net proceeds of the sale of the said real property or any part thereof; and further that the trustee may in his sole and uncontrolled discretion use and apply any portion of the proceeds of sale of any part of said real property in, to or for the improvement or development of the rest or any remaining part thereof.

5. The trustee shall, within twenty-five years from date, whenever in his discretion it shall be advisable to do so, convey the portion of the premises hereby conveyed, which shall not then have been conveyed by him pursuant hereto, to the said beneficiary, the Beverly Ridge Company, or to its several members above mentioned or their heirs and assigns in proportion to their several interests as the same may then be.

IN WITNESS WHEREOF, the said Trustors have hereunto set their hands the day and year first above written.

CHARLES STONE

CLARA F. STONE.

STATE OF CALIFORNIA

County of Los Angeles—ss.

Be it remembered that on this 18th day of April, 1925, before me G. M. Harbeson a Notary Public in and for the State of California, county of Los Angeles, appeared Charles Stone and Clara F. Stone, his wife, to me per-

sonally known, and known to me to be the parties names in and who executed the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I affix my seal the day and year first above written.

G. M. HARBESON

*Notary Public in and for the County of  
Los Angeles, State of California.*

Trustee's Exhibit C is in words and figures as follows:

“POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, F. A. Arbuckle, John M. Pratt, R. W. Purpus, W. I. Norcross, and James Westervelt, all of Los Angeles, California, being and constituting, with Charles Stone, all of the members of that certain copartnership now doing business under the fictitious firm name of BEVERLYRIDGE COMPANY, at 201-204 Wright & Callendar Building, Los Angeles, have made, constituted and appointed, and by these presents do make, constitute and appoint the said Charles Stone our true and lawful attorney for us and each of us, and in our names, places and steads, and for our use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, interests, dividends, and demands of whasosver kind as are now or shall hereafter become due, owing, payable of belonging to us members of the aforesaid copartnership, or to it, and to have, use and take all lawful ways and means in our names or otherwise, for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree

for the same and acquittances or other sufficient discharges for the same, for us and in our names, to make, seal and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seizing and possession of all lands, and all deeds, and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements, and hereditaments upon such terms and conditions, and under such covenants, as he shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession of in action, and to make, do, and transact all and every kind of business of what nature and kind soever, and also for us and in our names, and as our joint and several act and deeds, to sign, seal, execute, deliver, and acknowledge such deeds, leases, and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises. And we authorize our said attorney one or more attorneys under him to substitute, and again at his pleasure revoke. Giving and granting unto Charles Stone, said attorney and his substitute or substitutes, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might

or could do if personally present, we hereby ratifying and confirming all that he, our attorney Charles Stone, or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREBY, we have severally hereunto set our hands the 28th day of February, 1925.

F. A. ARBUCKLE  
R. W. PURPUS  
J. M. PRATT  
W. I. NORCROSS  
JAMES WESTERVELT.

(Acknowledgment by all parties before C. A. Sprecher, Notary Public, February 28, 1925)

Trustee's Exhibit D is in the words and figures, in part, as follows:

THIS DEED OF TRUST, made this 18th day of March, 1925, Between HERBERT W. CARLSON, a single man, party of the first part, hereinafter called the TRUSTOR, CITIZENS TRUST AND SAVINGS BANK, a corporation of Los Angeles, California, party of the second part, hereinafter called the TRUSTEE and W. IRVIN NORCROSS, a single man, party of the third part, hereinafter called the BENEFICIARY:

WITNESSETH: THAT, WHEREAS, the maker of the note hereinafter mentioned is indebted to the Beneficiary in the sum of THREE HUNDRED FIFTY THOUSAND and no/100 (\$350,000.00) Dollars, and has agreed to pay the same with interest, according to the terms of one certain Promissory note in words and figures as follows:

(The body of the trust deed contains the usual provisions).

EIGHT: It is further agreed, and as a part of the terms of this Trust Deed, by the parties hereto that a

partial Reconveyance or Reconveyances may be had and will be given at any time during the life time of this Trust Deed on parcels of one Acre or more of the property described in this Trust Deed, upon the payment of \$3190.00 for each Acre released and a pro rata portion of \$3190.00 for any amount more than one Acre. The sum paid shall apply on the principal of the Trust Deed Note secured hereby provided, however, that the Trustor be not in default under the terms of this Trust Deed at the time such partial Reconveyance or Reconveyances are demanded.

NINTH: It is further agreed, and a part of the terms of this Trust, by the parties hereto that the Trustor may at any time during the life of this Trust Deed, demand of the beneficiary, a full reconveyance of the remaining part of the property not reconveyed, provided however the owner of the property gives a new Trust Deed covering the property described in the full reconveyance being issued, using the new description, which new description will be taken from map or maps filed in the County Records and that portion of the property not included in the said map or maps. The new Trust Deed is to be a second lien and amount of the unpaid balance of the Note or Notes being released. The new Note and Trust Deed to bear 8% interest payable semi-annually and to expire 30 months after date of Trust Deed being released.

The release clause in the new Trust Deed shall be as follows:

“It is hereby agreed that a partial Reconveyance or Reconveyances may be had and will be given at any time

during the life time of this Trust Deed of one or more lots, which lots are portions of the property described in this Trust Deed, upon the payment of a sum which amount shall bear the same ratio to the basic release price of \$3190.00 per Acre, as the property released bears to one Acre. The minimum release price for any one parcel shall be not less than \$700.00. The property described by metes and bounds is to be released in the manner as described by release clause in this Trust Deed. The amount paid for the release of the lot or lots is to apply on the principal of the note secured hereby, provided, however, that the Trustor be not in default under terms of this Trust Deed at the time such partial Reconveyance or Reconveyances are demanded. After the first Trust Deed in the amount of \$250,000.00 to which this Trust Deed is subject, has been paid off, the release price for each lot or lots and the price for release of acreage shall be 25% more than the amount specified above. The amount paid for the release of the lot or lots or the release of acreage is to apply on the principal of the note secured hereby, provided however, that the Trustor be not in default under terms of this Trust Deed at the time such partial Reconveyance or Reconveyances are demanded.

TENTH: It is hereby further agreed by the parties hereto that they will sign the tract map or maps, said map or maps to be subdivision map or maps covering part of all of the property described in this Trust Deed and to be filed with the County of Los Angeles for record.

This Deed of Trust shall not be effective unless PRIOR

TO ITS RECORDATION, the trust is accepted by the Trustee, under its corporate name and seal, by a duly authorized official thereof.

. . . . .

WITNESS the hand of the Trustor, the day and year first above written.

HERBERT W. CARLSON

The foregoing trust is hereby accepted.

Citizens Trust and Savings Bank.

By HERBERT C. BOEHM

*Assistant Trust Officer.*

(Acknowledgment of Herbert W. Carlson, on the 20th day of March, 1925, before G. M. Harbeson, Notary Public, County of Los Angeles, State of California)

S T I P U L A T I O N

IT IS HEREBY STIPULATED BY AND BETWEEN the respective counsel in the foregoing action, that the foregoing Engrossed Statement of Evidence is true and correct, and that the Judge of the United States District Court may settle, allow and certify the same.

GEO. D. BLAIR

J. GILBERT FALL

*Attorneys for Claimants.*

LORRIN ANDREWS

*Attorney for Trustee in Bankruptcy.*

I hereby certify that the foregoing Statement of Evidence was heretofore presented to the Court for allowance within the time provided by law and that the said Statement of Evidence was settled and allowed as correct,

that the foregoing Statement of Evidence shall constitute the engrossed Statement of Evidence.

I am signing this statement in the absence of Judge Henning who is outside this District and State.

Dated this 27 day of July, 1929.

WM. P. JAMES,

*Judge of the United States District Court.*

(Endorsed): Filed Jul. 27, 1929, at 30 min past 11 o'clock a. m., R. S. Zimmerman, Clerk. B. B. Hansen, Deputy.

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[TITLE OF COURT AND CAUSE.]

STIPULATION FOR DIMINUTION OF PRINTED  
RECORD

It is hereby stipulated and agreed by and between the respective counsel in the above entitled action, that in printing the Transcript of Record on Appeal the Titles and Captions of the documents therein be omitted, and indicated by a line thus; (Title of Court and Cause.) and that endorsements thereon be omitted with the exception of the Clerk's filing endorsement.

J. GILBERT FALL,

*Attorneys for Appellants.*

LORRIN ANDREWS,

*Attorney for Appellee.*

Approved this 30 day of July, 1929.

WM. P. JAMES,

*United States District Judge.*

(Endorsed): Filed Jul 30, 1929 at 15 min past 12 o'clock a. m. R. S. Zimmerman, Clerk, Louis J. Somers, Deputy.



[TITLE OF COURT AND CAUSE.]

PRAECIPE.

*To the Clerk of the United States District Court for the Southern District of California, Central Division:*

You are hereby requested to make a transcript of record to be filed in the United States *District* Court of Appeals for the Ninth Circuit pursuant to an appeal, allowed in the above entitled proceedings, and to include in such transcript the following:

1. Proof of Unsecured Debt of George H. Oswald.
2. Proof of Unsecured Debt of Richard Castle.
3. Objections to Claims of George H. Oswald and Richard Castle.
4. Opinion of Referee on Claims of Richard Castle and George H. Oswald.
5. Findings of Fact and Conclusions of Law of Referee on Claims of George H. Oswald and Richard Castle.
6. Petition for Review.
7. Order Allowing Review.
8. Referee's Certificate on Petition for Review.
9. Minute Orders of April 18th and May 3, 1929 of United States District Court affirming Findings of Referee.
10. Petition for Appeal.
11. Assignment of Errors.

12. Order Allowing Appeal.

13. Statement of Evidence.

14. This Praecipe.

Dated July 2, 1929.

GEO. D. BLAIR,

J. GILBERT FALL,

*Solicitors for Appellants.*

Service of above Praecipe admitted this 2 day of July,  
1929.

LORRIN ANDREWS,

*Solicitor for Appellees.*

(Endorsed): Filed Jul 3 1929 at 20 min. past 2 o'clock  
P. M. R. S. Zimmerman, Clerk, by B. B. Hansen,  
Deputy.

CLERK'S CERTIFICATE

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing..... pages, numbered from 1 to....., inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by Appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains full, true and correct copy of:

1. Proof of Unsecured Debt of George H. Oswald.
2. Proof of Unsecured Debt of Richard Castle.
3. Objections to Claims of George H. Oswald and Richard Castle.
4. Opinion of Referee on Claims of Richard Castle and George H. Oswald.
5. Findings of Fact and Conclusions of Law of Referee on Claims of George H. Oswald and Richard Castle.
6. Petitions for Review (Two).
7. Order Allowing Review.
8. Referee's Certificates on Petition for Review.
9. Minute Orders of April 18th and May 3, 1929, of United States District Court Affirming Findings of Referee.
10. Petitions for Appeal (Two).
11. Assignments of Errors (Two).
12. Orders Allowing Appeal.
13. Statement of the Evidence.
14. Praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Tran-

script of Record on Appeal amount to....., and that the same has been paid to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this .....day of August, in the year of our Lord One Thousand Nine Hundred Twenty Nine, and of our Independence the One Hundred Fifty-fourth.

R. S. ZIMMERMAN,  
Clerk of the District Court of the United  
States of America, in and for the South  
ern District of California.

By .....  
*Deputy Clerk.*